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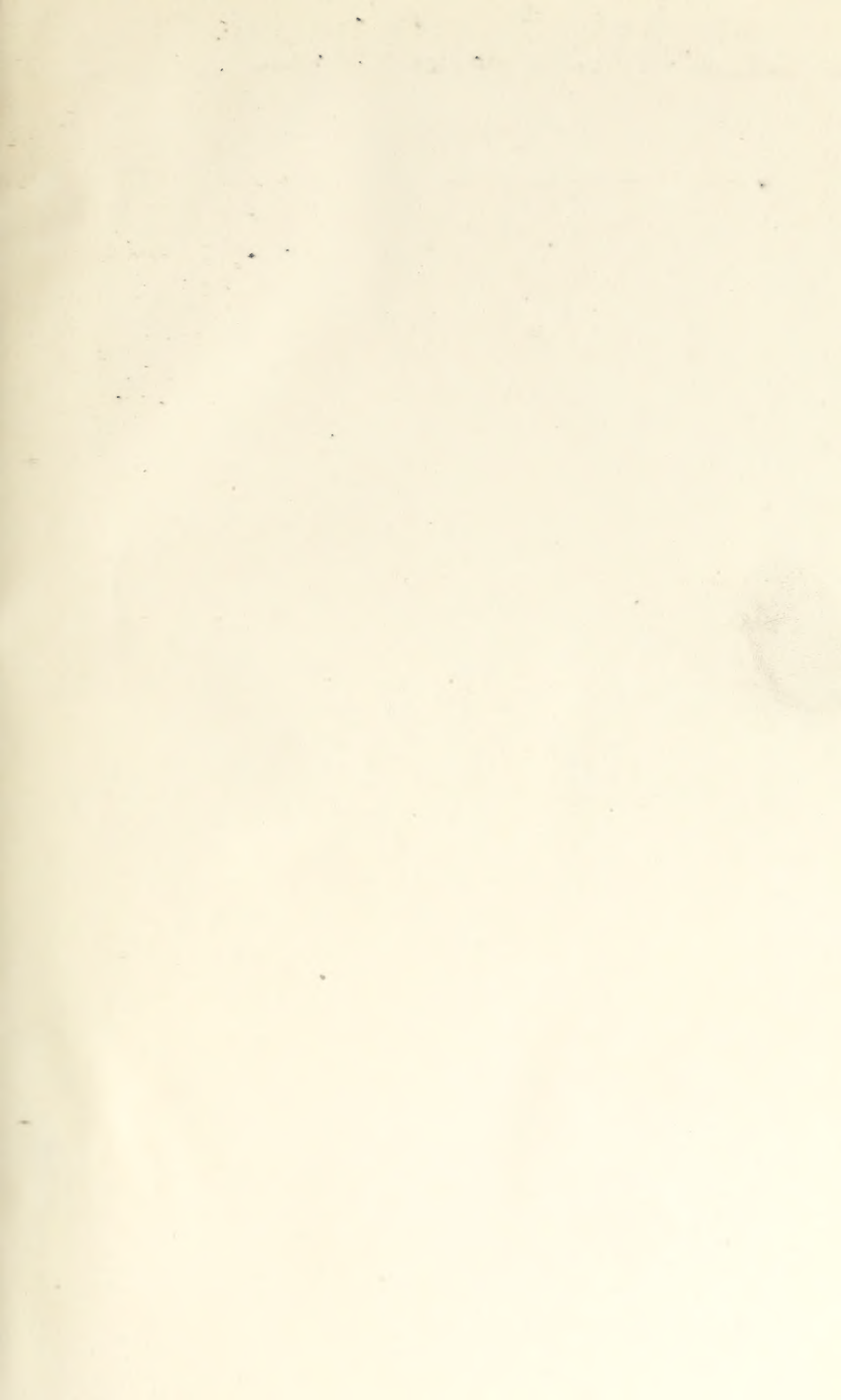
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United States  
Circuit Court of Appeals

For the Ninth Circuit.

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Transcript of Record.

(IN FOUR VOLUMES.)

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JOHN A. JESSON, E. R. PEOPLES, JAMES W.  
HILL, RAY BRUMBAUGH, R. C. WOOD  
and JOHN L. McGINN,

Appellants,

vs.

F. G. NOYES, as Receiver of the WASHINGTON-  
ALASKA BANK, a Corporation, Organized  
Under the Laws of the State of Nevada,  
Appellee.

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VOLUME I.

(Pages 1 to 320, Inclusive.)


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Upon Appeal from the United States District Court  
for the Territory of Alaska, Fourth Division.

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Filed

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for the Territory of Alaska, Fourth Division.

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# INDEX TO THE PRINTED TRANSCRIPT OF RECORD.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur. Title heads inserted by the Clerk are enclosed within brackets.]

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*In the District Court for the Territory of Alaska,  
Fourth Division.*

No. 1756.

F. G. NOYES, Receiver of the Washington-Alaska  
Bank, a Corporation,

Plaintiff and Appellee,

vs.

J. A. JESSON, D. H. JONAS, DAVID YARNELL,  
DAN RYAN, C. J. ROBINSON,  
JOHN L. MCGINN, R. C. WOOD, M. H. McMULLEN,  
C. E. CLAYPOOL, ROBERT SHEPPARD,  
HANS STARK, JOHN FLYGAR, JOHN P. ANDERSON,  
E. R. PEOPLES, JAMES W. HILL, RAY BRUMBAUGH,  
J. A. JACKSON, JOHN A. CLARK, J. A. HEALEY,  
GEORGE PRESTON, B. R. DUSENBURY and L. N. JESSON,

Defendants and Appellants.

**Names and Addresses of Attorneys of Record.**

O. L. RIDER, Vinita, Oklahoma;

McGOWAN & CLARK, Fairbanks, Alaska;

A. R. HEILIG, Fairbanks, Alaska;

JOHN L. MCGINN, Keystone Apartments, San  
Francisco, Cal.

Attorneys for Defendants and Appellants.

[1½\*]

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\*Page-number appearing at foot of page of Original Certified Transcript of Record.



*In the District Court for the Territory of Alaska,  
Fourth Judicial Division.*

No. 1756.

F. G. NOYES, Receiver, etc.,

Plaintiffs,

vs.

J. A. JESSON et al.,

Defendants.

**Stipulation as to the Printing of the Record.**

It is hereby stipulated and agreed that in the printing of the record herein for the consideration of the Court on appeal and cross-appeal, that the title of the court and cause in full on all the pages shall be omitted except on the first page, and inserted in place and stead therein "Title of Court and Cause."

Dated at Iditarod, Alaska, this 6th day of July, 1914.

O. L. RIDER,

Attorney for Plaintiff.

McGOWAN & CLARK,

A. R. HEILIG,

JOHN L. McGINN,

Attorneys for Defendants Wood, Hill, Peoples,  
Brumbaugh, McGinn and J. A. Jesson.

[Endorsed]: Filed in the District Court, Territory of Alaska, 4th Div., Jul. 6, 1914. Angus McBride, Clerk. [1]

[Title of Court and Cause.]

**Amended Complaint.**

Plaintiff complains of defendants and for cause of action alleges:

I.

The Washington-Alaska Bank is, and every since the 21st day of January, 1908, has been a corporation duly organized and existing under and by virtue of the laws of the State of Nevada. Said Washington-Alaska Bank was originally incorporated under the corporate name of "The Fairbanks Banking Company," but afterwards, on or about, or shortly prior to, the 14th day of September, 1910, its name was by amendments to its articles of incorporation duly changed to Washington-Alaska Bank." The authorized capital stock of the plaintiff corporation is and was at all times since its incorporation \$300,000.00, divided into 300 shares of the par value of \$100.00 each. In and by the articles of incorporation of said Fairbanks Banking Company, a corporation, it was provided among other things that the board of directors of said corporation should consist of twelve members, four to hold office for six months, or until their successors were elected and qualified, four to hold office for twelve months, or until their successors [2] were elected and qualified, and four to hold office for eighteen months, or until their successors were elected and qualified.

II.

On and prior to the 14th day of March, 1908, the defendants R. G. Wood and James W. Hill, and one

E. T. Barnette, were, as partners, engaged in the business of banking at the city of Fairbanks, Territory of Alaska, under the firm name and style of "The Fairbanks Banking Company."

### III.

The Fairbanks Banking Company, a corporation, was organized for the purpose of taking over and acquiring the business heretofore conducted and carried on by The Fairbanks Banking Company, a partnership, as hereinbefore alleged, and for the purpose of promoting, organizing and commencing the business of said Fairbanks Banking Company, a corporation, the said E. T. Barnette, R. C. Wood and James W. Hill, circulated and caused to be circulated in the city of Fairbanks and vicinity, stock subscription lists subscribing to the capital stock of said corporation, which said stock subscription lists, omitting the signatures, were in words and figures as follows:—

"KNOW ALL MEN BY THESE PRESENTS, that, WHEREAS, the organization of a corporation is contemplated by the undersigned under the laws of the State of Nevada, to be known as the Fairbanks Banking Company, with a capital stock of Three hundred thousand dollars, divided into three thousand shares of the par value of one hundred dollars each. The object of which said corporation is to carry on a general banking business in the town of Fairbanks, Alaska, and to absorb the present Fairbanks Banking Company, and such other banking institutions as may be deemed advisable; and WHEREAS steps are now being taken for the or-

ganization of such corporation under the laws of said State of Nevada, but owing to the distance between said State of Nevada and the town of Fairbanks, Alaska, considerable delay must necessarily ensue before such corporation can be created and the organization thereof perfected; and WHEREAS, we, the undersigned, each and all of us are desirous of becoming stockholders in said corporation for the number of shares hereinafter by us set opposite our respective names, and are desirous that in order that the capital stock of said corporation shall be fully subscribed, and the names and number of stockholders of said new corporation may be known to us, that subscriptions for such stock should now be made.

NOW, THEREFORE, in consideration of the premises, we, the undersigned, do hereby promise and agree to and with each other and with said new corporation to be formed [3] to be known as the Fairbanks Banking Company, to subscribe, and each of us do hereby subscribe of the capital stock of said Fairbanks Banking Company the number of shares by us set opposite our respective names and that when said corporation is organized and the stock thereof issued to us we will either pay to the treasurer of said corporation the par value thereof, or such an amount thereof as we can conveniently pay; or, in the event at said time we are unable to make any cash payment upon said stock, that each will give his promissory note for the individual amount of stock subscribed by him; one due on or before the first day of June, 1909, for twenty-five per cent of the amount of the capital stock subscribed by him, and the other



for seventy-five per cent thereof, which shall become due and payable on or before the first day of July, 1908; said notes to bear interest at the rate of one per cent per month from the date of the issuance of the stock. If at the time the stock shall be issued any of the undersigned shall pay thereof an amount equal to twenty-five per cent thereof, then such person is to execute his note for the remaining seventy-five per cent due on or before the first day of July, 1908. If said payment so made shall not equal twenty-five per cent of the par value thereof, then such individual agrees to execute a note for an amount equal to twenty-five per cent thereof, which shall become due and payable on or before the first day of June, 1908, and a note for the remaining seventy-five per cent as hereinbefore set forth. It is expressly understood and agreed that said corporation is to retain and remain the owners of stock until the same is fully paid.

IN WITNESS WHEREOF we have hereunto set our hands and seals this —— day of January, 1909.”

#### IV.

Said subscription lists were headed by said E. T. Barnette, subscribing for 440 shares of the capital stock of said corporation; R. C. Wood, 220 shares; James W. Hill, 220 shares; and were then signed by various other persons, the total subscriptions aggregating over 2,400 shares; the defendant John L. McGinn subscribed for 100 shares; the defendant J. A. Jesson for 100 shares; the defendant D. H. Jonas for 100 shares; the defendant David Yarnall for 100 shares; the defendant L. N. Jesson for 100 shares;

the defendant John Flygar for 20 shares; the defendant Hans Stark for 100 shares; the defendant Dan Ryan for 25 shares; the defendant C. E. Claypool for 50 shares; the defendant C. J. Robinson for 50 shares; the defendant B. R. Dusenbury for 50 shares; the defendant J. A. Healey for 5 shares; the defendant George Preston for 5 shares; and the defendant John P. Anderson for 25 shares. [4]

## V.

The first meeting of the incorporators and the subscribers to the capital stock of said Fairbanks Banking Company, a corporation, was held at the city of Fairbanks, Alaska, on March 12, 1908, and a board of twelve directors for said corporation, named and selected by E. T. Barnette, were elected, and a resolution passed and entered on the minutes as follows:

“RESOLVED, that the matter of taking over the property of the Fairbanks Banking Company, the copartnership, consisting of E. T. Barnette, J. W. Hill and R. C. Wood, be left to the board of directors.” Said first board of directors was composed of said E. T. Barnette, and the defendants David Yarnall, J. A. Jasson, D. H. Jonas, Dan Ryan, C. J. Robinson, M. H. McMullen, C. E. Claypool, Robert Sheppard, Hans Stark, John Flygar and John P. Anderson.

## VI.

On the 12th day of March, 1908, said board of directors met at the city of Fairbanks, Alaska, and elected as officers of said corporation: E. T. Barnette, President; the defendant James W. Hill, Vice-president; the defendant R. C. Wood, Cashier; and

the defendant B. R. Dusenbury, Assistant Cashier, Secretary and Treasurer, and on the 13th day of March, 1908, said board of directors held an adjourned meeting, and authorized the acquisition and purchase by the Fairbanks Banking Company, a corporation, of the assets and business of the Fairbanks Banking Company, a partnership, and thereafter said purchase and acquisition, and the terms thereof were reduced to writing in a contract signed and executed by the parties, dated March 16th, 1908, a true copy of which is hereto annexed marked "Exhibit One" and made a part of this complaint.

#### VII.

That in accordance with said contract "Exhibit One," stock in said corporation, the Fairbanks Banking Company, was issued to E. T. Barnette, 260 shares; James W. Hill, 130 shares; and R. C. [5] Wood, 120 shares; and the assets of said copartnership enumerated and described in said contract "Exhibit One" were transferred to said corporation. On March 14th, 1908, there was also issued to the various subscribers therefor, stock in said corporation to the amount of 1,502 shares, of the par value of \$150,200.00, and thereupon the said corporation, on March 16th, 1908, commenced business as a bank at said city of Fairbanks, Territory of Alaska, and thereafter continued to carry on and conduct said business until and including January 4th, 1911.

#### VIII.

The capital stock of the Gold Bar Lumber Company, a corporation, which was sold and transferred by said copartnership, the Fairbanks Banking Com-

pany, to the said Fairbanks Banking Company, a corporation, for \$341,049.00, did not cost the said copartnership in excess of the sum of \$248,067.89, at which sum it was carried on the books of said copartnership at and prior to the transfer to the said corporation, and was at the date of the transfer of a value less than \$248,067.89, and said stock was transferred to and received by said Fairbanks Banking Company, a corporation, at an arbitrarily increased and greatly fraudulent over-valuation of more than \$93,881.11, all of which was done and accomplished with full knowledge, co-operation and consent of all the defendants, Dan Ryan, C. J. Robinson, M. H. McMullen, C. E. Claypool, Robert Sheppard, Hans Stark, John Flygar, J. A. Jesson, D. H. Jonas, David Yarnall, and John P. Anderson, who were then and there directors of said Fairbanks Banking Company, a corporation, and of the defendant R. C. Wood, who was then and there its cashier and a member of the copartnership, Fairbanks Banking Company, and of the defendant James W. Hill, who was then and there its Vice-president and a member of said copartnership, and of the defendant D. R. Dusenbury, who was then and there its Assistant Cashier, Secretary and Treasurer, and of the defendant John L. McGinn, who was then and there attorney and legal adviser both of said copartnership and said corporation Fairbanks Banking Company, and who afterward [6] became a director and vice-president of said corporation, as hereinafter alleged. Said Gold Bar Lumber Company was engaged in the business of manufacturing and selling lumber in the state of Wash-



ington, which business was then and there and ever since has been and still is of an exceedingly hazardous and speculative nature, and the certificates representing the capital stock in said corporation, the Gold Bar Lumber Company, were not at the time of the organization of said corporation, the Fairbanks Banking Company, in the possession of said copartnership, nor were they delivered to said corporation, The Fairbanks Banking Company. [7]

### IX.

That the notes, loans and discounts sold and transferred to said Fairbanks Banking Company, a corporation, by said Fairbanks Banking Company, a copartnership, were accepted by said corporation at their face value with the knowledge, consent and approval of the defendants J. A. Jesson, D. H. Jonas, David Yarnell, Dan Ryan, G. J. Robinson, M. H. McMullen, C. E. Claypool, Robert Sheppard, Hans Stark, John Flygar, John P. Anderson, R. C. Wood, James W. Hill, John L. McGinn and B. R. Dusenbury, then directors and officers of said corporation as aforesaid. That of said notes so sold and transferred as aforesaid, a large amount were then past due, worthless and uncollectible, said amount being in excess of \$53,000.00, all of which are still unpaid and without substantial value, a list of which is as follows:

Maker.	When due.	Amount.
Wm. Casey	May 31, 05	\$ 40.00
Gelling & Bechtolt	Sep. 15, 07	1050.00
Ensor & Griffith	Sep. 15, 06	435.00
Fairburn et al.	Jul. 15, 07	1332.
E. D. Howe	Mar. 4, 07	457.25
Wm. James	Jun. 15, 07	311.97
Alex Larson	Jan. 24, 07	354.35
D. W. Truitt	Sep. 1, 07	1000.
C. Timmerman	May 17, 05	105.
Emily Waters	Dec. 5, 07	40.
Wm. Barrett	Jun. 23, 06	8407.58
Jas. Frost	Jun. 1, 07	850.
Geo. Fenwick	Nov. 31, 06	2000.
P. Gallagher	Sep. 23, 07	133.
W. F. Green	Aug. 1, 07	1332.74
F. Schaupp	Feb. 27, 07	3785.22
Tharp & Rusk	Sep. 14, 07	2500.
J. Worgan	Jul. 1, 06	200.
D. H. Berger	Jul. 28, 07	550.
J. A. York	Oct. 14, 04	100.
“ “	Feb. 1, 05	100.
“ “	Mar. 15, 05	206.
Tanana Electric Co.	Dec. 16, 07	27997.38

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\$53287.49

That it was then and there well known to said defendant, directors and officers as aforesaid, and by each of them, or by the exercise of ordinary care might have been so known to them, and each of them that said notes above listed were at the time they were so accepted and transferred, past due and

worthless or without substantial value. [8]

### X.

The 1,502 shares of the capital stock in said corporation, The Fairbanks Banking Company, so issued to the various subscribers therefor on March 14th, 1908, were all paid for by the promissory notes of the said various subscribers and not in cash, and a large amount of said notes were and still are worthless and uncollectible, and have never been paid, said amount being of the face value of \$22,982.33. [9]

### XI.

With an issued capital stock of \$202,200.00, paid for as hereinbefore alleged, and not otherwise, and with no other assets than those of the Fairbanks Banking Company, a copartnership, as mentioned and set forth in "Exhibit One" added to the said stock subscription notes of the face value of \$150,200.00, the Fairbanks Banking Company, a corporation, on March 16th, 1908, commenced business as a bank at said city of Fairbanks, and assumed not only the deposits, debts and other liabilities of the Fairbanks Banking Company, a copartnership, amounting to \$538,940.31, but also an alleged special deposit of \$200,000.00 of E. T. Barnette, never in fact deposited by him, but being the alleged capital claimed by said Barnette, and by the contract "Exhibit One" agreed to be paid to him.

### XII.

On March 16, 1908, when said Fairbanks Banking Company, a corporation, so commenced business with said assumed liabilities of \$738,940.31, said Fairbanks Banking Company, a corporation, was

actually insolvent in this: That its assets were then insufficient in value to pay its debts, all of which its then directors and officers hereinbefore mentioned well knew, or by the exercise of ordinary care might have known. And furthermore, said Fairbanks Banking Company, a corporation, at and for a long time after it commenced business, was not paying and did not pay in cash or lawful money, demands made upon it in the ordinary course of business. Prior to the 16th day of March, 1908, said Fairbanks Banking Company, a copartnership, had for a considerable time ceased and failed and refused to pay in cash or lawful money demands made upon it in the ordinary course of business, and was upon what was termed a "scrip" basis; that is, was paying demands made upon it by issuing and paying out its own circulating notes. At the time said Fairbanks Banking Company, a corporation, commenced business, it assumed a liability of \$64,737.00 for outstanding circulating notes of the Fairbanks Banking Company, a copartnership, and had in cash, including gold-dust, bullion and lawful money only the sum of \$38,511.87. [10]

### XIII.

Notwithstanding the facts hereinbefore and hereinafter alleged, the said Fairbanks Banking Company, a corporation, continued after the 16th day of March, 1908, to carry on the general business of banking and of receiving and soliciting deposits, and said bank and the defendants as its directors, officers and employees at all times falsely and wrongfully represented and held out to the public generally that said



Fairbanks Banking Company, a corporation, had paid-up capital stock of \$300,000.00.

#### XIV.

The said defendants David Yarnall, Dan Ryan, C. J. Robinson, M. H. McMullen, C. E. Claypool, Robert Sheppard, Hans Stark, John Flygar, J. A. Jesson, John P. Anderson, D. H. Jonas and said E. T. Barnette continued to be and act as directors of said Fairbanks Banking Company, a corporation, and to manage and control its business as such from said 12th day of March, 1908, until the 12th day of September, 1909, when the term of office of David Yarnall, Dan Ryan, C. J. Robinson and M. H. McMullen expired. On said 12th day of September, 1908, said David Yarnall, Dan Ryan, S. J. Robinson, were duly re-elected directors of said Fairbanks Banking Company, a corporation, for the term of eighteen months, the defendant E. R. Peoples was duly elected director of said corporation for the term of eighteen months, and the defendant James W. Hill was elected a director of said corporation for the term of six months to take the place of Hans Stark, resigned. For the entire period from September 12th, 1908, to March 12, 1909, the duly elected and acting board of directors of said Fairbanks Banking Company, a corporation, consisted of the defendants J. A. Jesson, John P. Anderson, D. H. Jonas, C. E. Claypool, Robert Sheppard, James W. Hill, John Flygar, David Yarnall, Dan Ryan, C. J. Robinson, E. R. Peoples and said E. T. Barnette, and during said period they managed, conducted and controlled said Fairbanks Banking Company, a cor-

poration, and its business as such. On said March 12th, 1909, said defendants C. E. Claypool, Robert Sheppard, James W. Hill, and John Flygar were duly re-elected directors of said [11] Fairbanks Banking Company, a corporation, for the term of eighteen months, and on March 13th, 1909, the defendant Ray Brumbaugh was duly elected a director of said corporation in the place of John P. Anderson, who had vacated his office by remaining absent from the District of Alaska. From and including March 13, 1909, to the 13th day of September, 1909, the duly elected and acting board of directors of said Fairbanks Banking Company, a corporation, were the defendants J. A. Jesson, Ray Brumbaugh, D. H. Jonas, C. E. Claypool, Robert Sheppard, James W. Hill, John Flygar, David Yarnall, Dan Ryan, C. J. Robinson, E. R. Peoples and said E. T. Barnette, and during said period they managed, conducted and controlled its business as such. On September 13th, 1909, the defendants J. A. Jesson, Ray Brumbaugh, and D. H. Jonas and said E. T. Barnette were duly re-elected directors of said Fairbanks Banking Company, a corporation, for the term of eighteen months, and the defendant John L. McGinn was duly elected a director thereof for six months to fill the place vacated by the defendant E. R. Peoples. From and including the 13th day of September, 1909, to the 12th day of April, 1910, the duly elected and acting board of directors of said Fairbanks Banking Company, a corporation, and who managed, controlled and directed its business as such, consisted of the defendants J. A. Jesson, Ray Brumbaugh, D. H. Jonas,

C. E. Claypool, Robert Sheppard, James W. Hill, John Flygar, David Yarnall, Dan Ryan, C. J. Robinson, and John McGinn, and said E. T. Barnette, except that on November 13th, 1909, the resignation as directors of Dan Ryan, and C. E. Claypool were accepted, and the defendants R. C. Wood and J. A. Jackson were duly elected in their place, and from November 13th, 1909, to April 12th, 1910, the said defendants R. C. Wood and J. A. Jackson were duly elected and acting directors of said Fairbanks Banking Company, a corporation. On said April 12th, 1910, the said defendants David Yarnall, J. A. Jackson, C. J. Robinson, and John L. McGinn were duly re-elected directors of said Fairbanks Banking Company, a corporation, and thereafter and until September 12th, 1910, the [12] board of directors of said Fairbanks Banking Company, a corporation, who managed, controlled and conducted its business as such consisted of the defendants J. A. Jesson, Ray Brumbaugh, D. H. Jonas, R. C. Wood, J. A. Jackson, Robert Sheppard, James W. Hill, John Flygar, David Yarnall, C. J. Robinson, and John L. McGinn, and said E. T. Barnette, except that on May 12th, 1910, the defendants John L. McGinn and R. C. Wood resigned as such directors, and on said 12th day of May, 1910, the defendant John A. Clark was duly elected in the place of the defendant John L. McGinn, and thereafter served and acted as such director, and on June 11th, 1910, J. A. Healey was duly elected in the place of R. C. Wood, and thereafter served and acted as such director. Prior to September 12th, 1910, to take effect on that day, the

number of directors of said Fairbanks Banking Company, a corporation, had been duly and regularly changed by an amendment to its articles of incorporation, from twelve directors to seven directors, to hold office for one year, and on said 12th day of September, 1910, the defendants J. A. Jackson, J. A. Jesson, J. A. Clark, J. A. Healey, D. H. Jonas, and George Preston, and said E. T. Barnette, were duly elected directors of said Fairbanks Banking Company, a corporation, and from said 12th day of September, 1910, until and including January 4th, 1911, they managed, and directed and controlled the business of said corporation as such, and are still directors thereof.

#### XV.

The defendant James W. Hill, although not originally a director of said Fairbanks Banking Company, a corporation, was, at the first meeting of the board of directors thereof, chosen and elected first vice-president of said corporation, and the said defendant James W. Hill, accepted said office and entered upon the duties thereof, and thereafter the said defendant James W. Hill continued to act as such vice-president, and to assist in managing and conducting the affairs and business of said Fairbanks Banking [13] Company, a corporation, and an executive officer thereof and a member of its executive committee, under salary until July 1st, 1909, and also continued thereafter to act as director thereof as hereinbefore alleged.

#### XVI.

The defendant B. R. Dusenbury, although not a



member of the board of directors of said Fairbanks Banking Company, a corporation, was, at the first meeting of the board of directors thereof, chosen and elected assistant cashier, and secretary and treasurer thereof, and said B. R. Dusenbury thereupon accepted said offices and entered upon the duties thereof, and thereafter said defendant B. R. Dusenbury continued to act as such assistant cashier, secretary and treasurer, and to assist in managing and conducting the affairs and business of said Fairbanks Banking Company, a corporation, as an executive officer thereof and a member of its committee, until May 12th, 1909. On said May 12th, 1909, said defendant B. R. Dusenbury was duly elected first vice-president of said Fairbanks Banking Company, a corporation, the duties of which he thereupon assumed, and he thereafter continued to be such vice-president and to assist in managing and conducting the affairs and business of said Fairbanks Banking Company, a corporation, as an executive officer and member of its executive committee, until October 12th, 1909.

## XVII.

Said defendant L. N. Jesson, although not a member of the board of directors of said Fairbanks Banking Company, a corporation, was on the 12th day of September, 1908, duly chosen and elected second vice-president thereof, and said defendant L. N. Jesson thereupon accepted said office and entered upon the duties thereof, and thereafter said defendant L. N. Jesson continued to act as such second vice-president, and continued to assist in managing and con-

ducting the affairs and business of said Fairbanks Banking Company, a corporation, as an executive [14] officer thereof, and as a member of the executive committee thereof, until the 12th day of September, 1910.

### XVIII.

Said defendant, R. C. Wood, although not originally a director of said Fairbanks Banking Company, a corporation, was, at the first meeting of the board of directors thereof, duly chosen and elected cashier thereof, and the said R. C. Wood thereupon accepted said office and entered upon the duties thereof, and acted and performed the duties of cashier of said Fairbanks Banking Company, a corporation, until June 29th, 1908, and was also afterwards director and manager of said Fairbanks Banking Company, a corporation, as hereinbefore and hereinafter alleged.

### XIX.

Shortly after said corporation, the Fairbanks Banking Company, commenced business, said corporation, wrongfully and unlawfully began to reduce its issued capital stock by accepting the surrender thereof and giving in return therefor either cash or the stock subscription notes given for said stock, a list of which stock so surrendered, together with the date of surrender, the number of shares surrendered, the name of the party surrendering, and the amount of cash or the subscription notes returned therefor, is as follows, to wit:

1908.

Date.	Number of Shares.	Party.	Amount.
Jun. 30	130	R. C. Wood	\$13,000.00
Jul. 15	1	P. B. Walsh	100.00
Jul. 20	10	Thomas E.	1,000
Jul. 20	20	McBride, A.	2,000
Jul. 20	2	Letnes, Anton	200
Jul. 20	10	A. N. Larson	1,000
Jul. 20	2	F. E. Johnson	200
Jul. 20	2	J. L. Tobin	200
Jul. 20	5	Harry Cribb	500
Jul. 20	2	S. Hall Young	200
Jul. 20	5	A. J. Nordale	500
Jul. 20	10	Barrett Sickenger	1,000
Jul. 23	5	E. A. Suter	500
Jul. 29	10	S. R. Weiss	1,000
Aug. 5	20	Osmund Olson	2,000
Aug. 6	5	A. J. Williams	500
Aug. 8	10	R. R. Myers	1,000
Aug. 12	5	D. Courtemanche	500
Aug. 14	10	E. M. Keys	1,000
			[15]
Forward.....			\$26,400
Sep. 18	10	Oscar Goetz	1,000
Sep. 18	5	G. A. Vedin	500
Oct. 24	2	McDonnell	200
Nov. 19	10	B. E. Johnson	1,000
Nov. 19	100	Strandberg Bros.	10,000
Nov. 25	10	Strandberg, Emma	1,000
Dec. 12	2	F. E. Johnson	200
1909.			
Feb. 9	2	John Clifford	200

Date.	Number of Shares.	Party.	Amount.
Feb. 19	5	Geo. Jestel	500
Jun. 10	10	Hart & McConnell	1,000
Sep. 21	5	Lewis Enstrom	500
Sep. 21	5	Oscar Enstrom	500
Oct. 28	10	H. B. Parkin	1,000
Oct. 28	1	Alex. Cameron	100
Oct. 28	2	Edith MacCormack	200
Oct. 28	2	J. W. MacCormack	200
Nov. 10	5	Francis H. Taylor	500
Nov. 23	5	McGowan & Clark	500
1910.			
Jan. 18	5	Horton & Dunham	500
Oct. 25	100	John L. McGinn	10,000

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\$56,000.00

That during all of the time from and including said June 30th, 1908, to and including said October 25th, 1910, the liabilities of said corporation to its general creditors, greatly exceeded its assets, and by accepting the surrender of its capital stock and returning therefor cash or subscription notes, as aforesaid, the assets of said corporation, to which said creditors could look for payment of their claims were further decreased, and the same were, in the manner and amounts aforesaid, withdrawn and divided among said stockholders of said corporation; that the surrender of said stock and the return of said cash and notes as above set forth, were made to and by said corporation with the full knowledge, consent and approval of the defendants and each of them who constituted its board of directors and offi-



cers on the dates aforesaid, or by the exercise of ordinary care the same could have been known to them and each of them; that the terms of office of the defendants herein as officers and directors of said Fairbanks Banking Company, a corporation, were as follows: [16]

D. H. Jonas	Director	Mar. 12, 1908	to	Jan. 4, 1911
J. A. Jesson	"	"	"	"
C. E. Claypool	"	"	"	Nov. 13, 1909
Hans Stark	"	"	"	Aug. 12, 1908
John Flygar	"	"	"	"
C. J. Robinson	"	"	"	Sep. 12, 1910
John P. Anderson	"	"	"	Mar. 13, 1909
M. H. McMullen	"	"	"	Sep. 12, 1908
Dan Ryan	"	"	"	Nov. 13, 1909
David Yarnell	"	"	"	Sep. 12, 1910
Robert Sheppard	"	"	"	"
E. R. Peoples	"	Sep. 12, 1908	"	Sep. 13, 1909
Ray Brumbaugh	"	Mar. 13, 1909	"	Sep. 12, 1910
John L. McGinn	"	Sep. 13, 1909	"	May 12, 1910
R. C. Wood	"	Nov. 13, 1909	"	"
J. A. Jackson	"	"	"	Jan. 4, 1911
John A. Clark	"	May 12, 1910	"	"
J. A. Healey	"	Jun. 11, 1910	"	"
George Preston	"	Sep. 12, 1910	"	"
James W. Hill	"	Sep. 12, 1908	"	Sep. 12, 1910
John L. McGinn	Attorney	Feb. 12, 1908	"	May, 12, 1910
L. N. Jesson, Second Vice-President and Executive Committeeman,		Sep. 12, 1908	"	Sep. 12, 1910
James W. Hill, Vice-President and Executive Committeeman,		Mar. 12, 1908	"	Jul. 1, 1909
R. C. Wood	Cashier	"	"	Jun. 30, 1908
R. C. Wood	General Mangr.	Sep. 13, 1909	"	May 12, 1910
B. R. Dusenbury, Asst. Cashier and Secretary-Treasurer,		Mar. 12, 1908	"	May 12, 1909
B. R. Dusenbury, Vice-President and Executive Committeeman,		May 12, 1909	"	Oct. 12, 1909
John L. McGinn, Vice President,		Oct. 12, 1909	"	May 12, 1910

## XX.

In addition to the 2022 shares of the capital stock in said corporation, the Fairbanks Banking Company, issued on March 14th, 1908, there was afterward issued to various persons in exchange for cash, notes or other considerations, one hundred and thirty-four shares and no more, but by reason of the surrender and cancellation of the shares as mentioned in the preceding paragraph hereof, the total issued capital stock never exceeded 2156 shares, and after November 9th, 1909, never exceeded 1726 shares.

## XXI.

In addition to the 520 shares of the capital stock in said Fairbanks Banking Company, a corporation, issued and delivered to said Barnette, Hill and Wood, the said Barnette, Hill and Wood, did, after the 16th day of March, 1908, compute or cause to be computed [17] to March 15th, 1908, all accrued interest on the loans and discounts of the Fairbanks Banking Company, a copartnership, which, in accordance with exhibit one attached to the complaint herein, were turned over to said Fairbanks Banking Company, a corporation. That prior thereto, to wit, on March 12th, 1908, the board of directors of said Fairbanks Banking Company, a corporation, authorized and directed that interest on said notes and discounts be computed to said March 15th, 1908, the same to be payable on or before December 31st, 1908, and that the amount of such accrued interest be placed to the credit of the Fairbanks Banking Company, a copartnership, all of which was done with the knowledge, consent and approval of the

defendants D. H. Jonas, J. A. Jesson, C. E. Claypool, Hans Stark, John Flygar, C. J. Robinson, John P. Anderson, M. H. McMullen, Dan Ryan, and David Yarnell, directors as aforesaid, and of the said R. C. Wood, its cashier, John L. McGinn, its attorney and legal advisor, James W. Hill, its Vice-President, and B. R. Dusenbury, its assistant cashier, secretary-treasurer. That pursuant to said authorization and direction, on March 23d, 1908, the interest account of said Fairbanks Banking Company, a corporation, was charged with the amount of \$39,642.81 as such accrued interest, and the same credited on the books of said corporation to an account known and styled "Old Bank Interest Account." That afterward, on August 5th, 1908, with the express knowledge, consent and approval of the defendants D. H. Jonas, James W. Hill, B. R. Dusenbury and Hans Stark, acting as members of the executive committee of said Fairbanks Banking Company, a corporation, there was issued to the said R. C. Wood, a certain certificate of deposit, due December 31st, 1908, in the sum of \$10,000.00, as an advancement on account of such accrued interest. That afterwards, to wit, on November 9th, 1908, the said James W. Hill, with the express knowledge, consent and approval of the defendants D. H. Jonas, Dan Ryan, James W. Hill, B. R. Dusenbury and L. N. Jesson as members of said executive committee, was authorized to withdraw \$5,000.00 as an advancement on account of said accrued interest. That afterward, to wit, on December 31st, 1908, there was placed on the books of said corporation [18] to

the credit of said E. T. Barnette \$19,741.79, and to the credit of said James W. Hill and R. C. Wood, each, \$9870.90, making a total of \$39,473.69 as such accrued interest, and the same was paid to each of said parties. That said interest was so computed and paid by said corporation out of its funds and without reference to whether or not the same had been collected from the makers of said notes. That as to not less than \$53,287.49 of said notes, said interest had not in fact been paid by said makers thereof, and the same was then and ever since said December 31st, 1908, has been due and unpaid and uncollectible, a list of which said notes is set out in Paragraph IX of the complaint as amended. That plaintiff has no means of knowing the rate at which such accrued interest was figured, but alleges that the same is within the knowledge of said defendants. Plaintiff further alleges that on said December 31st, 1908, the defendants D. H. Jonas, J. A. Jesson, C. E. Claypool, John Flygar, C. J. Robinson, John P. Anderson, Day Ryan, David Yarnell, Robert Shepard, E. R. Peoples, and James W. Hill were members of the board of directors of said Fairbanks Banking Company, a corporation, and the defendant John L. McGinn was its attorney and legal advisor and the defendant L. N. Jesson its Second Vice-President and a member of its executive committee, the defendant James W. Hill its Vice-President and a member of its executive committee, and the defendant B. R. Dusenbury its assistant cashier and secretary-treasurer, and the said payment was made with the knowledge, consent and approval of each of



said defendants, or by the exercise of ordinary care could have been known to them and each of them. That said interest was so allowed and paid without any consideration therefor. [19]

## XXII.

On and for a long time prior to the 12th day of May, 1909, there were engaged in business at the city of Fairbanks, other than the said Fairbanks Banking Company, a corporation, two banks, the First National Bank, a corporation organized under the laws of the United States, and the Washington-Alaska Bank, a corporation organized under the laws of the State of Washington. (Said latter-named corporation will hereinafter be called the Washington-Alaska Bank of Washington, to distinguish it from the Washington-Alaska Bank, of which plaintiff is receiver.) On or about May 12th, 1909, the said Fairbanks Banking Company, a corporation, acting through its president, E. T. Barnette, and with the knowledge, consent and approval of its board of directors, and other officers, entered into an agreement with the Washington-Alaska Bank of Washington, in and by which said Fairbanks Banking Company, a corporation, and said Washington-Alaska Bank of Washington, agreed, to and they did, on or about said May 12th, 1909, purchase and acquire one-half each, the entire capital stock of said First National Bank. The capital stock of said First National Bank was then Fifty Thousand Dollars, and it had, or claimed to have, a surplus of Fifty Thousand Dollars. Said Fairbanks Banking Company, a corporation, and said Washinton-Alaska

Bank, of Washington, paid for the entire capital stock of the said First National Bank the sum of \$62,500.00 each, or a total sum of \$125,000.00. That at the time said capital stock was so purchased, the said First National Bank was engaged actively in the banking business in Fairbanks, Alaska, and ever since has been and now is so engaged. [20]

### XXIII.

On or about September 13th, 1909, the said Fairbanks Banking Company, a corporation, acting through its President, E. T. Barnette, with the express knowledge, consent and approval of the defendants, D. H. Jonas, J. A. Jesson, C. E. Claypool, John Flygar, C. J. Robinson, Dan Ryan, David Yarnell, Robert Sheppard, E. R. Peoples, Ray Brumbaugh, John L. McGinn and James W. Hill constituting its board of directors, and of said L. N. Jesson, its Second Vice-President and a member of its executive committee, and the said B. R. Dusenbury, its Vice-President and also a member of its executive committee, purchased of and from W. H. Parsons, Falcon Joslyn, John Schramm and others, the entire capital stock of the Washington-Alaska Bank of Washington, and paid therefor the sum of \$250,000.00 of the money and assets of the Fairbanks Banking Company, a corporation. On the date of said purchase, the said Washington-Alaska Bank of Washington had an issued capital stock of \$150,000.00, and claimed to have, or apparently had according to its books, a net surplus and undivided profit of \$66,839.16, and no more. On said September 13th, 1909, the said Washington-Alaska Bank of

Washington had in its apparent assets, however, the sum of \$70,040.10 of loans past due, and which were and still are without substantial value, and was carrying its real estate and fixtures at \$10,000.00 in excess of their real value. Said Fairbanks Banking Company, a corporation, with the express knowledge, consent and approval of the defendants aforesaid, its then directors and officers, as aforesaid, on said September 13th, 1909, paid to the stockholders of the Washington-Alaska Bank of Washington for said capital stock thereof a premium or bonus of more than \$100,000.00 over and above the then paid in capital stock of said Washington-Alaska Bank of Washington, and over and above the actual value thereof, and thereby wrongfully and fraudulently lost and dissipated more than \$100,000.00 of the funds and assets of the said Fairbanks Banking Company, a corporation, and greatly aggravated and increased its already insolvent condition. [21]

#### XXIV.

Upon and after the purchase and acquisition by the Fairbanks Banking Company, a corporation, of the said capital stock of said Washington-Alaska Bank of Washington, the said Fairbanks Banking Company, a corporation, acting through its board of directors, and by and with the knowledge, consent and approval of the defendant L. N. Jesson, its Second Vice-President, selected and appointed the defendant R. C. Wood, who was then cashier of the First National Bank, manager of the three banks, the Fairbanks Banking Company, a corporation, the Washington-Alaska Bank of Washington, and the

First National Bank, and said three banks continued thereafter until on or about the 12th day of May, 1910, to be managed and operated by the defendant R. C. Wood, as manager, but ostensibly as separate and distinct and unassociated banks. [22]

### XXV.

On April 10th, 1910, the said Fairbanks Banking Company, a corporation, being then and there the owner and in control and management of the Washington-Alaska Bank of Washington, caused said Washington-Alaska Bank of Washington to declare and pay to the Fairbanks Banking Company, a corporation, as the owner of the entire capital stock of the said Washington-Alaska Bank of Washington, a dividend of thirty-three and one-third per cent, on the capital stock of said Washington-Alaska Bank of Washington, amounting to the sum of \$50,000.00. At the time said dividend was so declared and paid, the entire capital stock of the Washington-Alaska Bank of Washington had been owned by said Fairbanks Banking Company, a corporation, and said Washington-Alaska Bank of Washington had been with the said Fairbanks Banking Company, a corporation, and said First National Bank, under the joint management of the defendant R. C. Wood, for the period of seven months, and during said seven months the net amount of surplus undivided profits and earnings, as shown by the books of said Washington-Alaska Bank of Washington, had decreased from \$66,839.16 to \$57,169.76, or a net loss of \$9,669.40 for seven months' operations. On the day said dividend was so declared and paid to said Fair-



banks Banking Company, a corporation, by said Washington-Alaska Bank of Washington, the said Washington-Alaska Bank of Washington had a capital stock of \$150,000.00, and an alleged and apparent surplus (as shown by the books) of \$57,169.76, but on said date it had among its assets, loans and discounts past due without substantial value, and which have not yet been paid and cannot be collected, amounting to \$76,005.35, and had invested in a certificate of deposit of its insolvent owner, the Fairbanks Banking Company, a corporation, the sum of \$125,000.00.

## XXVI.

On said 12th day of April, 1910, said Fairbanks Banking Company, a corporation, acting by its then board of directors, ordered and directed said \$50,000.00 received as dividend from [23] said Washington-Alaska Bank of Washington, to be disposed of by crediting \$25,000.00 thereof to the stock account, thus reducing the amount at which the entire capital stock of the Washington-Alaska Bank of Washington was carried on the books of the Fairbanks Banking Company, a corporation, to \$225,000.00, and the other \$25,000.00 of said dividend was ordered added to the alleged earnings or net profits on hand of the said Fairbanks Banking Company, a corporation. Thereupon, on said 12th day of April, 1910, said Fairbanks Banking Company, a corporation, acting by its then board of directors, by a resolution entered on the minutes of the said Fairbanks Banking Company, a corporation, wrongfully and fraudulently declared and

ordered to be paid on its then outstanding capital stock of \$168,600.00 a dividend of twenty per cent, amounting to \$33,720.00, which said dividend was thereupon actually paid to the then stockholders of the said Fairbanks Banking Company, a corporation.

## XXVII.

On said 12th day of April, 1910, at and before the time when the same was ordered to be paid, the said Fairbanks Banking Company, a corporation, was, and long prior thereto had been in a grossly insolvent and failing condition. After adding to the apparent surplus, undivided profits and earnings then on hand the sum of \$25,000.00 of the dividend received from the Washington-Alaska Bank of Washington said Fairbanks Banking Company, a corporation, had on hand in apparent surplus, undivided profits and earnings the sum of \$32,749.82, while the dividend declared and paid amounted to \$33,720.00. Said Fairbanks Banking Company, a corporation, had in fact on said date no earnings, surplus or undivided profits on hand out of which said dividend could legally be paid, but on the contrary had at and prior to said date neither capital nor surplus in this [24] said Fairbanks Banking Company, a corporation, had on said date an issued capital stock of \$168,600.00. It was carrying *on* as an asset on its books \$75,000.00 as a premium on the capital stock of its subsidiary corporation, the Washington-Alaska Bank of Washington, which said asset had no existence whatever and was purely imaginary and of no value; said Fairbanks Bank-

ing Company, a corporation, further had on said April 12th, 1910, carried as an asset at their face value, loans and discounts which were past due, were worthless, and have not yet been paid, and cannot be collected, amounting to \$118,250.47, and was also still carrying on its books as an asset of \$341,949.00 the capital stock of said Gold Bar Lumber Company, which originally had been and still was fraudulently over-valued by a sum in excess of \$93,881.11. That said dividend amounting to the sum of \$33,720.00 was wrongfully, unlawfully and fraudulently declared and paid by said Fairbanks Banking Company, a corporation, with the express knowledge, consent and approval of the defendants D. H. Jonas, J. A. Jesson, John Flygar, C. J. Robinson, David Yarnell, Robert Sheppard, Ray Brumbaugh, John L. McGinn, R. C. Wood, J. A. Jackson and James W. Hill, constituting its said board of directors, and of the defendant L. N. Jesson, its Second Vice-President and a member of its executive Committee and R. C. Wood, its General Manager, out of, by and with the funds and money of the depositors of said Fairbanks Banking Company, a corporation, and not by, out of or with the surplus, earnings, undivided profits of the said Fairbanks Banking Company, a corporation. That on said date of April 12th, 1910, the said Fairbanks Banking Company, a corporation, owed to depositors the sum of \$960,689.79. [25]

### XXVIII.

In the month of May, 1910, and shortly prior to the 12th day of May, 1910, the said E. T. Barnette,

as President of the Fairbanks Banking Company, a corporation, and of the Washington-Alaska Bank of Washington, by and with the knowledge and consent of the then directors and officers of the said Fairbanks Banking Company, a corporation, wrongfully sold and transferred to the defendants R. C. Wood and John L. McGinn, the entire capital stock of the said First National Bank, for the same sum of \$125,000.00 which the said Fairbanks Banking Company, a corporation, and the said Washington-Alaska Bank, of Washington, had paid therefor on or [26] about May 12th, 1909. That said sale and said transfer of said stock in said First National Bank to the defendants R. C. Wood and John L. McGinn, was claimed to have been made under and pursuant to an option claimed to have been given to the defendant Wood at the time said stock was purchased by said Fairbanks Banking Company, a corporation, and the said Washington-Alaska Bank of Washington, but said option, if it ever in fact existed as claimed, was entered into without consideration, and was void. Said entire capital stock in said First National Bank was carried by said Fairbanks Banking Company, a corporation, for an entire year without any interest or profit paid to or received by said Fairbanks Banking Company, a corporation, and solely for the use, benefit and profit of said defendants R. C. Wood and John L. McGinn, all of which was done, suffered and permitted by and with the knowledge, consent and approval of all of the then directors and officers of the said Fairbanks Banking Company, a corporation, by which act alone



the said Fairbanks Banking Company, a corporation, was damaged in a large sum of money, to wit in a sum in excess of twenty-five thousand dollars.

### XXIX.

Immediately, or very shortly after the said John L. McGinn and the said R. C. Wood so purchased and acquired said stock in said First National Bank, and on May 12th, 1910, said R. C. Wood resigned as, and ceased to be a director of said Fairbanks Banking Company, a corporation, and said John L. McGinn resigned as and ceased to be a director and vice-president of said Fairbanks Banking Company, a corporation. At the time and long prior to their said resignations, the said R. C. Wood and John L. McGinn had full and complete knowledge and means of knowledge of the grossly insolvent and failing condition of the said Fairbanks Banking Company, a corporation, and they furthermore know that the said E. T. Barnette had at that time not yet withdrawn his alleged special deposit of \$200,000.00, and the said R. C. Wood and [27] John L. McGinn then and there knew that said E. T. Barnette was likewise aware of the said insolvent and failing condition of the said Fairbanks Banking Company, a corporation, and they, the defendants Wood and McGinn, also knew that said E. T. Barnette could and would shortly withdraw in cash the whole of said alleged special deposit of \$200,000.00, and which said E. T. Barnette actually did withdraw within sixty days after May 12th, 1910, thereby preferring himself to the extent of \$200,000.00 as an alleged creditor of said insolvent Fairbanks Banking Company,

a corporation, all of which was done with the knowledge, consent and approval of the then directors and officers of the said Fairbanks Banking Company, a corporation.

### XXX.

On the first day of October, 1910, the said Fairbanks Banking Company, a corporation, acting through its then board of directors, caused the Washington-Alaska Bank of Washington to be consolidated with the Fairbanks Banking Company, a corporation, by having and causing the said Washington-Alaska Bank of Washington to turn over, deliver and transfer to the said Fairbanks Banking Company, a corporation, all of its assets, and the said Fairbanks Banking Company, a corporation, thereupon assumed all of the liabilities of said Washington-Alaska Bank of Washington, including amounts due to depositors amounting to \$947,800.29. Although said Washington-Alaska Bank of Washington had apparent undivided profits of \$4,658.92 on and prior to the time of said consolidation, said Washington-Alaska Bank of Washington on said date had no undivided profits on hand, but in fact its capital stock of \$150,000.00 was seriously impaired in this: On said first day of October, 1910, said Washington-Alaska Bank of Washington had loans and discounts carried at their face value of \$100,704.98, which were then and there past due, and were and still are bad, worthless and uncollectible, and have not yet been paid, all of which was then and there known to the then directors and officers of said Fairbanks [28] Banking Company, a cor-

poration, or by the exercise of ordinary care might have been known. After said consolidation, said Fairbanks Banking Company, a corporation, continued to carry on and conduct a banking business at said city of Fairbanks as formerly, but under the name of Washington-Alaska Bank, and said Washington-Alaska Bank and its then board of directors at all times after October 1st, 1910, wrongfully, fraudulently and without right, carried on the books of said Washington-Alaska Bank as a book asset the item "Premium Washington-Alaska Bank Stock, \$75,000.00," which said asset had no existence whatever, but in fact was purely imaginary, false and fictitious.

### XXXI.

Although said Fairbanks Banking Company, a corporation, was at all times insolvent and in a failing condition, as herein alleged, said Fairbanks Banking Company, a corporation, (but under the name of the Washington-Alaska Bank after the first day of October, 1910) continued actively in business as a bank, and received deposits from the public generally until and including January 4th, 1911, and thereafter on January 5th, 1911, in a certain suit entitled "Tanana Valley Railroad Company, a corporation, and John Zug, plaintiffs, vs. Washington-Alaska Bank, a corporation, defendant," commenced in said District Court, Territory of Alaska, Fourth Division, an order was duly given and made appointing F. W. Hawkins receiver of said Washington-Alaska Bank, and said Mack, who thereupon duly qualified and entered upon his duties as such re-

ceiver. Thereafter, on the 6th day of January, 1911, said District Court by an order duly given and made appointed E. H. Mack jointly with said Hawkins, receiver of said Washington-Alaska Bank, and said Mack thereupon duly qualified and entered upon his duties as such receiver; and thereafter said Hawkins and Mack continued to be and act as receivers of said Washington-Alaska Bank until the 12th day of May, 1911, when said Hawkins and Mack resigned as such receivers, and thereupon on said date last named said District Court, by an order duly given and made and entered [29] appointed the plaintiff, F. G. Noyes, receiver of said Washington-Alaska Bank, and said F. G. Noyes thereupon duly qualified as such receiver and ever since has been, and now is the duly qualified and acting receiver of the said Washington-Alaska Bank, and as such is plaintiff in this suit.

## XXXII.

On the date and at the time said Washington-Alaska Bank ceased business, on January 4th, 1911, said Washington-Alaska Bank had liabilities in excess of \$1,037,296.13, consisting of amounts due to depositors, other than banks, \$921,357.56, and amounts due to banks in excess of \$115,938.77, and the assets of said Washington-Alaska Bank were, and still are, by reason of the wrongful, fraudulent and negligent acts of the defendants herein alleged, insufficient to pay said liabilities in full.

## XXXIII.

The receivers of said Washington-Alaska Bank have collected and reduced to cash as far as possible the assets of said Washington-Alaska Bank, and



there has been declared and paid upon the acknowledged or proven liabilities of said bank, dividends aggregating fifty per cent, save and except that \$12,627.70 of said dividends have either not been called for, or have been withheld by order of Court, and save also that the Dexter Horton National Bank of Seattle, to whom is due the sum of \$128,899.37, and other creditors to the amount of \$4132.63 have not proven their claims, or yet demanded their dividends.

#### XXXIV.

At the time said Washington-Alaska Bank ceased business on January 4th, 1911, there was due and owing from said Washington-Alaska Bank, to the said Dexter Horton National Bank of Seattle, the sum of \$128,899.37, and the said Dexter Horton National Bank had in its possession all of the said capital stock of the said Gold Bar Lumber Company, so belonging to said Washington-Alaska Bank as hereinbefore alleged, and said Dexter Horton National Bank claimed to hold said stock in said Gold Bar Lumber Company as collateral security to secure the payment to said Dexter Horton National [30] Bank of said sum of \$128,899.37, and said Dexter Horton National Bank still has possession of said stock in said Gold Bar Lumber Company, and still so claims to hold the same as such collateral security.

#### XXXV.

From the time of the organization of said Fairbanks Banking Company, a corporation, at all times the sum of \$341,949.00 of the assets of said Fairbanks Banking Company, a corporation, have been in-

vested in the said stock of the said Gold Bar Lumber Company, and said stock constituted a book asset of that amount when said Washington-Alaska Bank ceased business, and is still subject to the claims made by said Dexter Horton National Bank of Seattle, an asset of said Washington-Alaska Bank. Said F. G. Noyes, as receiver of the said Washington-Alaska Bank, plaintiff, owing to the fact that said stock in said Gold Bar Lumber Company is so held and claimed by said Dexter Horton National Bank, has been and now is unable to sell or dispose of the same, and although he has made diligent attempt has been unable to obtain for said stock in said Gold Bar Lumber Company any offer in excess of the claim of said Dexter Horton National Bank, or any offer whatsoever; and plaintiff alleges that if said stock in said Gold Bar Lumber Company, so belonging to said Washington-Alaska Bank, has any value in excess of the claim of said Dexter-Horton National Bank, it is of a wholly uncertain and speculative character.

### XXXVI.

The only remaining assets of said Washington-Alaska Bank in said receiver's hands, out of which any further dividends to depositors and other creditors can be paid, are bills, and notes and overdrafts due from various persons and corporations, of the face value of \$266,020.31; Real Estate and furniture and fixtures carried on the books of said corporation at \$40,726.13; stock in the Chena Milling, Smelting & Refining Company of the par value of \$1000.00, and a claim against the Scandinavian-American Bank of

Seattle for \$17,886.05, in litigation. That said bills, notes and [31] overdrafts, although of the face value of \$266,020.31, are not of that value. The whole amount thereof are past due, and not to exceed \$80,000.00 thereof are owing from solvent debtors or can be collected, and the remainder thereof are bad, worthless and uncollectible. Said real estate, furniture and fixtures are not of the actual cash or market value of more than \$20,000.00, and said stock in said Chena Milling, Smelting & Refining Company has no actual or market value.

### XXXVII.

Plaintiff therefore does hereby allege that at the time said Washington-Alaska Bank ceased business, on January 4th, 1911, the assets of said Washington-Alaska Bank were, and still are, by reason of the wrongful, fraudulent and negligent acts and conduct of the defendants herein alleged, insufficient in amount to pay the debts and liabilities thereof, in full, and that the sum which will be required in addition to said assets, in order to pay said liabilities in full, will and does amount to more than Four Hundred Thousand Dollars.

### XXXVIII.

The said wrongful, unlawful and fraudulent and negligent acts and conduct of the defendants, while directors and officers of said Washington-Alaska Bank (formerly Fairbanks Banking Company), as hereinbefore alleged, are and were the sole and proximate causes of the said assets of said Washington-Alaska Bank being so insufficient, as aforesaid, to pay its liabilities in full, and by reason of said wrong-

ful, unlawful and fraudulent and negligent acts and conduct of said defendants, while directors and officers of said Washington-Alaska Bank (formerly Fairbanks Banking Company) said Washington-Alaska Bank suffered loss and damage in excess of the sum of Four Hundred Thousand Dollars, the exact amount of which cannot be determined except by an accounting to be had in a Court of Equity.

### XXXIX.

On account of the various terms of office of said defendants as directors and officers of said Washington-Alaska Bank not being identical, but beginning and ending at many and divers different [32] dates, it would, if plaintiff herein should pursue any remedy at law he might have in the premises, cause a multiplicity of suits and actions, and cause large and useless expense, and furthermore, the trial and examination into the matters and things herein alleged will involve the examination into many complicated accounts, which can only properly be done in a court of equity. Therefore plaintiff alleges that he has in the premises no plain, speedy or adequate remedy at law, and therefore invokes the aid of a court of equity, wherein only matters of this kind are properly cognizable and relievable.

WHEREFORE, plaintiff prays for judgment of this Court, that an accounting be had and taken by this Court, or by a Master or Referee, appointed by this Court and under its supervision, to determine the amount due to plaintiff for the wrongful, fraudulent and negligent acts and conduct of the defendants as directors and officers of said Washington-



Alaska Bank (formerly Fairbanks Banking Company) herein alleged, and that plaintiff have judgment entered against defendants, and each of them, for the amount found due from them respectively upon such accounting.

PLAINTIFF ALSO PRAYS for all other and further relief to which he may be in equity entitled, including costs.

O. L. RIDER,  
Attorney for Plaintiff.

United States of America,  
Territory of Alaska,—ss.

F. G. Noyes, being first duly sworn, deposes and says: I am the plaintiff named in the foregoing amendment to complaint; I have read said amendments to complaint, know the contents thereof, and believe the same to be true.

F. G. NOYES.

Subscribed and sworn to before me this 23d day of May, A. D. 1913.

[Notarial Seal] L. D. BENNETT,  
Notary Public in and for the Territory of Alaska,  
Residing at Fairbanks. [33]

Due and legal service of copy of the foregoing amendments to complain is hereby accepted for the defendants J. A. Jesson, George Preston, E. R. Peoples, John A. Clark, Ray Brumbaugh and James W. Hill, this —— day of May, 1913.

McGOWAN & CLARK,  
Attorneys for Said Defendants.

Due and legal service of copy of the foregoing amendments to complaint is hereby accepted for the

defendants R. C. Wood, J. A. Healey and John L. McGinn, this 23 day of May, 1913.

A. R. HEILIG,

Attorney for Said Defendants. [34]

[**Exhibit 1—Agreement and Assignment, March 16, 1908, Between A. W. Hill et al. and The Fairbanks Banking Co.**]

## AGREEMENT AND ASSIGNMENT

between

J. W. Hill, E. T. Barnette and R. C. Wood to and with The Fairbanks Banking Company. [35]

## AGREEMENT.

This Indenture, made and entered into this 16th day of March, 1908, by and between E. T. Barnette, James W. Hill and R. C. Wood, copartners doing business under the firm name and style of The Fairbanks Banking Company of Fairbanks, Alaska, the parties of the first part, and the Fairbanks Banking Company, a corporation organized, created and existing under and by virtue of the laws of the State of Nevada, party of the second part.

WITNESSETH: That, whereas, the parties of the first part as copartners since the month of May, 1905, have been engaged in carrying on and conducting a general banking business in the town of Fairbanks, Alaska, under the name and style of the Fairbanks Banking Company, and is possessed at this time as a part of the property and business of said copartnership—

(a) Stock in the following corporations, namely:

1. Four-fifths of the entire stock of the Gold Bar Lumber Company, a corporation organized, created and existing under and by virtue of the laws of the State of Washington. The certificates of which were issued August the 14th, 1906, as follows:—Certificate No. 11 to R. C. Wood, 24 shares; Certificate No. 12, E. T. Barnette, 48 shares; Certificate No. 13, James W. Hill, 24 shares. Said Certificates of Stock now being in the possession of the Scandinavian-American Bank of Seattle, Washington, and enjoined by Seattle court from delivering. Said stock being of the value of \$341,949.00 as per statement hereto attached, marked Exhibit A.
  2. The entire stock of the Tanana Publishing Company, a corporation organized and existing under and by virtue [36] of the laws of the State of Washington. Said stock being of the agreed value of \$12,000.00.
- (b) Of the following real estate:—
1. Bank building and lot of the agreed value of .....\$19,423.58
  2. Warehouse of agreed value of..... 3,360.00
  3. Building and lot town of Cleary, where a branch bank is being conducted; the agreed value of..... 1,695.50
  4. Assay building and plant, agreed value of ..... 2,860.57
- (c) Have outstanding loans and discounts of the value of...353,842.54
- All of which are evidenced by notes of

the parties owing the same. A scheduled statement specifying the name of the debtor, and the face of the note is thereto attached and marked Exhibit B. Some of which said notes are secured by mortgages upon real or personal property; and

(d) Overdrafts as appear upon the books of the parties of the first part, of the agreed value of .....	8,326.75
as per list attached marked Exhibit C.	
(e) Due from Banks as follows:	
Bank of B. N. A.....	2236.66
Dome City Bank.....	714.42
National Park Bank.....	790.61
Seattle National Bank.....	3951.00
Valdez Bank & Mercantile Co. ....	247.78
Dexter, Horton & Co.....	1240.40
Amounting to the sum of.....	9,180.87
(f) Cash on hand amounting to.. ....	35,774.38
(g) Gold-dust of the value of .....	2,737.49
(h) Sundry other credits of the parties of the first part to the agreed value of....	637.34
Making the total resources of the Bank as agreed upon by the parties hereto of the value of.....	790,940.31



And, whereas, the liabilities of said parties of the first part are as follows:

1. Script now in circulation..... 64,737.00
2. Deposits—Ordinary ... .. 356,677.92
3. Deposits—Savings.... .. 63,238.22

[37]

4. Due to Banks as follows:—

Alaska Bank & Safe Deposit Co.....	273.44
Ladd & Tilton.....	355.96
Corn Exchange National Bank.....	7,659.38
First National Bank, San Francisco	7,357.09
Scandinavian-American Bank .....	12,713.93
National Bank of Commerce.....	12.81
Cleary Branch .....	25,919.56

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Making a total liability..... 538,940.31

And, whereas, the party of the second part was incorporated for the express purpose of taking over all of the property, real, personal and mixed of the parties of the first part, their business and good will (save and except the sum of \$200,000.00, the original capital of the parties of the first part, the same being the personal property of E. T. Barnette) to the valuation thereon placed, as heretofore set forth. And in consideration thereof was to assume and pay all the liabilities of the parties of the first part, as hereinbefore set forth; and

Whereas, E. T. Barnette of the parties of the first part has personally belonging to him of the assets of the parties of the first part the sum of \$200,000.00, being the amount of the capital stock of the parties of the first part contributed to said copartnership by

the said E. T. Barnette; and it has been agreed that said sum of \$200,000.00 shall be repaid by the party of the second part to the said E. T. Barnette one year from the release of the said Gold Bar stock from the injunction now in force against it; and that said E. T. Barnette during said time shall leave said amount upon deposit without interest with the party of the second part, provided, however, that in the event the party of the second part shall sell said Gold Bar stock for cash, then the said sum of \$200,000.00 immediately upon receipt of said cash by the party of the second part shall become immediately [38] due and payable; and in the event that said Gold Bar stock is not sold for cash, but part for cash and part on time, then the said E. T. Barnette shall be entitled to receive such a proportion of said sum of \$200,000.00 as the cash paid upon the purchase price of said Gold Bar stock shall bear to the entire purchase price. And,

Whereas, owing to a certain action now pending in the Superior Court of the State of Washington, for King County, entitled J. H. Causten, Plaintiff, vs. E. T. Barnette, Defendant, in which said action the said Causten is seeking to be declared the owner of a certain part and portion of the capital stock of the Gold Bar Lumber Company issued in the name of E. T. Barnette, as heretofore set forth; and

Whereas, said litigation is now undetermined, and the right of the said Causten to any part or portion of said stock of the Gold Bar Lumber Company is undetermined, and it is the desire of the said E. T. Barnette, and the party of the second part, that the

said E. T. Barnette shall indemnify the party of the second part for any loss that may be sustained by reason of any adverse decision in the value of the Gold Bar stock; and said E. T. Barnette has heretofore agreed that the sum of \$200,000.00 before mentioned shall also be security to the party of the second part under the conditions and terms set forth on page three of this agreement, against any adverse decision of the Court in Causten vs. Barnette suit, as such decision may decrease the value of the Gold Bar property as accepted by the party of the second part; and

Whereas, the party of the second part has agreed with the parties of the first part to issue to them stock for the amount that the assets of said company shall exceed its liabilities less the sum of \$200,000.00, and the parties of the first part have agreed to accept the same. [39]

Now, therefore, for the purpose of carrying out the terms and agreements between the parties hereto, as hereinbefore set forth, this Indenture,

Witnesseth: That the parties of the first part for and in consideration of the foregoing and of other good and valuable consideration to them in hand paid by the party of the second part, the receipt whereof is hereby acknowledged, do by these presents assign, transfer and set over unto the party of the second part, four-fifths of the entire stock of the Gold Bar Lumber Company, a corporation created and existing under and by virtue of the laws of the State of Washington, and agree to transfer and deliver to the party of the second part the certificates

of stock now owned by them as hereinbefore set forth as soon as they obtain possession of same; and do hereby assign, transfer and set over unto the party of the second part all of their right, title and interest in and to all and singular the property, real, personal and mixed of said Gold Bar Lumber Company situated at Gold Bar, Washington, or wheresoever situated according to statements hereto attached.

And the said E. T. Barnette personally agrees to and with the party of the second part that he will save the party of the second part harmless as to any decrease in the value of said Gold Bar Lumber Company stock on account of the litigation now pending in the court of Seattle entitled Causten vs. Barnette, and that the sum of \$200,000.00 shall remain upon deposit with the Fairbanks Banking Company upon the terms and conditions heretofore set forth on page 3 of this agreement, and be security to said party of the second part against any adverse decision of the Court in said suit which may decrease the value of the Gold Bar property as accepted by the party of the second part.

The parties of the first part also hereby assign, transfer [40] and set over unto the party of the second part all of their stock in and to the Tanana Publishing Company, and the property that belongs to said corporation as heretofore agreed between the parties. It being understood that the stock of paper now in the possession of the parties of the first part shall remain and be their property.

The parties of the first part hereby assign, transfer and set over unto the party of the second part



all their right, title and interest in and to the Bank Building and the lot upon which the same is situated, the warehouse situated thereon, the building and lot in the town of Cleary, and all the right, title and interest in and to the assay building and plant situated in Fairbanks, Alaska, and hereby agree that they will procure and execute the necessary deeds to transfer said real property. And the parties of the first part hereby agree that they will procure and execute the necessary deeds to transfer said real property. And the parties of the first part hereby assign, transfer and set over unto the party of the second part all and singular the personal property, fixtures, vault, safe deposit boxes, and stock in trade, apparatus and effects used in connection with the business of said bank and the business and good will of the parties of the first part to the party of the second part, and to its assigns forever.

The parties of the first part hereby assign, transfer and set over unto the party of the second part all of their outstanding loans and discounts as the same appear in the scheduled statement hereto attached marked exhibit "A," and the notes of the debtors given to evidence the amount of such loans and discounts, together with all mortgages upon real or personal property that have been given to secure the same, and hereby agree that they will transfer to the party of the second part by proper indorsement all of said notes and mortgages and forthwith deliver the same into the [41] possession of the party of the second part.

Also all of the right, title and interest of the par-

ties of the first part in and to all overdrafts as the same appear upon the list hereto attached marked exhibit "C," and all moneys due and owing the parties of the first part from the banks mentioned in page 2 of this agreement; and likewise hereby transfer, assign and set over to the party of the second part all cash on hand now belonging to the parties of the first part; all gold-dust in their possession as the same appears on page 2 of this agreement, and all the property of the parties of the first part, real, personal or mixed that has this day been turned over to the party of the second part, and of which the party of the second part is now in the possession of.

The intention of this agreement being to place the party of the second part in the shoes of the parties of the first part as to the banking business of the Fairbanks Banking Company and as to all properties heretofore mentioned or specified.

To have and to hold unto the party of the second part, its successors and assigns, forever.

And the parties of the first part hereby authorize and empower the party of the second part, its successors and assigns, to perform all acts that may be necessary to protect and preserve the properties hereby assigned; and to bring all necessary actions at the cost of the party of the second part to enforce the collection thereof, or to protect the same.

And the said party of the second part in consideration of the foregoing hereby covenant and agree to and with the parties of the first part that it will in due course pay all the debts and discharge all the liabilities of the said parties of the first part as the

same are specified on [42] pages 2 and 3 of this agreement, and will at all times hereafter effectually keep indemnified the parties of the first part their executors and administrators and their assets and effects against all such debts and liabilities and all actions, proceedings, costs and expenses in respect thereto, and all costs and expenses by reason of any action or proceedings which may be instituted or taken by said party of the second part by virtue of the power or authority hereinbefore contained, or of anything relating thereto.

The party of the second part agrees to pay to E. T. Barnette the sum of \$200,000.00 as hereinbefore on page three of this agreement specified, save and except, however, that if a decision adverse to the said E. T. Barnette shall be rendered in said cause of Causten vs. Barnette and by reason thereof the value of the Gold Bar Stock shall be depreciated by reason of Causten being declared the owner of a part or portion thereof, then, the amount of such depreciation shall be deducted from said sum of Two Hundred Thousand Dollars.

The party of the second part hereby agrees that it will issue to the parties of the first part paid up stock to the amount they shall be entitled to under the terms of this agreement.

This agreement shall extend to and bind the heirs, executors, administrators, successors and assigns of the parties hereto.

In witness whereof, the parties of the first part have hereunto set their hands and seals, and the party of the second part by resolution of its board of

directors has hereunto by its president and secretary set its corporate name and seal this the 16th day of March, 1908.

Signed, sealed and delive  
red in the presence of: [43]

JOHN L. McGINN.	E. T. BARNETTE.	(Seal)
H. F. YEAGER.	JAMES W. HILL.	(Seal)
	R. C. WOOD.	(Seal)

FAIRBANKS BANKING COMPANY,  
By E. T. BARNETTE,  
President.

[Seal] Attest: R. B. DUSENBURY,  
Secretary.

United States of America,  
Territory of Alaska,—ss.

THIS is to certify that on this 16th day of March, 1908, personally appeared, E. T. Barnette, James W. Hill and R. C. Wood, to me personally known to be the individuals described in and whose signatures are subscribed to the foregoing instrument and they acknowledged to me individually, and not one for the other, that they signed, sealed and delivered the said instrument freely and voluntarily for the uses and purposes therein mentioned.

In witness whereof, I have hereunto set my hand and seal this the day and year hereinabove written.

[Seal] JOHN L. McGINN,  
Notary Public for Alaska. [44]

United States of America,  
Territory of Alaska,—ss.

THIS is to certify that on this, the 16th day of March, 1909, personally appeared before me E. T.



Barnette and B. R. Duzenbury to me personally known and known to me to be the president and secretary, respectively, of the Fairbanks Banking Company, the corporation named in the foregoing instrument as the party of the second part, and the said president executed the said instrument, and acknowledged to me that he signed, sealed and delivered the same by authority of the board of directors of said corporation, for the uses and purposes therein mentioned, and the secretary affixed the seal of said corporation thereto.

In witness whereof, I have hereunto set my hand and seal this the day and year hereinabove written.

[Seal]

JOHN L. McGINN,  
Notary Public for Alaska.

[Endorsed]: No. 1756. In the District Court for the Territory of Alaska, Fourth Division. F. G. Noyes, Receiver of the Washington-Alaska Bank, Plaintiff, vs. J. A. Jesson et al., Defendants. Amended Complaint.

Filed in the District Court, Territory of Alaska, 4th Div. May 23, 1913. C. C. Page, Clerk. By H. C. Green, Deputy. [45]

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**[Motion of John A. Jesson et al. to Strike Amended Complaint.]**

[Title of Court and Cause.]

**MOTION TO STRIKE.**

Comes now the defendants John A. Jesson, Raymond Brumbaugh, E. R. Peoples, James W. Hill, George Preston, and John A. Clark, and move this Court for an order striking the amended complaint

in the above-entitled action from the files of this Court, for the reason that more than one cause of action has been attempted to be pleaded in said amended complaint, without stating each cause of action separately as prescribed by section ninety-six of part four of Carter's Annotated Codes of Alaska.

McCOWAN & CLARK,  
Attorneys for Moving Defendants.

[Endorsed]: No. 1756. In the United States District Court, Territory of Alaska, Fourth Division. F. G. Noyes, as Rec'r., etc., Plaintiff, vs. John A. Jesson et al., Defendants. Motion to Strike. John A. Jesson, Raymond Brumbaugh, E. R. Peoples, James W. Hill, George Preston, John A. Clark.

Filed in the District Court, Territory of Alaska, 4th Div. May 28, 1913. C. C. Page, Clerk. By H. C. Green, Deputy. [46]

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[Title of Court and Cause.]

**Motion of R. C. Wood to Strike Amended Complaint.**

Comes now R. C. Wood, one of the defendants in above-entitled action and moves the Court for an order striking out from this case the amended complaint herein upon the ground that said amended complaint contains a large number of alleged causes of action, and in no case does any one of the alleged causes of action effect all the parties defendant, and said several causes of action are not stated or pleaded

separately, and do not all belong to the same class.

JOHN L. McGINN,

A. R. HEILIG,

Attys. for Wood.

Received copy May 28, 1913.

O. L. RIDER,

Atty. for Pltff.

[Endorsed]: No. 1756. In the District Court for the Territory of Alaska, 4 Division. Noyes, Plaintiff, vs. Jesson et al., Defendant. Motions to Strike Amended Complaint of R. C. Wood, J. L. McGinn, J. A. Healey.

Filed in the District Court, Territory of Alaska, 4th Div. May 29, 1913. C. C. Page, Clerk. By H. C. Green, Deputy. [47]

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[Title of Court and Cause.]

**Motion of John L. McGinn to Strike Amended Complaint.**

Comes now John L. McGinn, one of the defendants in above-entitled action and moves the Court for an order striking out from this case the amended complaint herein upon the ground that said amended complaint contains a large number of alleged causes of action, and in no case does any one of the alleged causes of action effect all the parties defendant, and said several causes of action are not stated or pleaded

separately, and do not all belong to the same class.

JOHN L. MCGINN,

A. R. HEILIG,

Attys. for McGinn.

Received copy May 28, 1913.

O. L. RIDER,

Atty for Pltff.

[Endorsed]: No. 1756. In the District Court for the Territory of Alaska, 4 Division. Noyes, Plaintiff, vs. Jesson et al., Defendant. Motions to Strike Amended Complaint of R. C. Wood, J. L. McGinn, J. A. Healey.

Filed in the District Court, Territory of Alaska, 4th Div. May 29, 1913. C. C. Page, Clerk. By H. C. Green, Deputy. [48]

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[Title of Court and Cause.]

**Motion of J. A. Healey, to Strike Amended Complaint.**

Comes now J. A. Healey one of the defendants in above-entitled action and moves the Court for an order striking out from this case the amended complaint herein upon the ground that said amended complaint contains a large number of alleged causes of action, and in no case does any one of the alleged causes of action effect all the parties defendant, and said several causes of action are not stated or pleaded separately, and do not all belong to the same class.

JOHN L. MCGINN,

A. R. HEILIG,

Attys. for Healey.



Received copy May 28, 1913.

O. L. RIDER,  
Atty. for plttf.

[Endorsed]: No. 1756. In the District Court for the Territory of Alaska, 4 Division, Noyes, Plaintiff, vs. Jesson et al., Defendants. Motions to Strike Amended Complaint of R. C. Wood, J. L. McGinn, J. A. Healey.

Filed in the District Court, Territory of Alaska, 4th Div. May 29, 1913. C. C. Page, Clerk by H. C. Green, Deputy. [49]

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[Title of Court and Cause.]

**Order Denying Motions of Defendants, J. A. Jesson, Brumbaugh, Peoples, Hill, Preston and Clark to Strike Amended Complaint.**

Now, on this day the motions of defendants J. A. Jesson, Brumbaugh, Peoples, Hill, Preston and Clark, to strike amended complaint coming on for hearing, after arguments by the respective attorneys, O. L. Rider for plaintiff, and John A. Clark, for said defendants,

It is ordered that said motions be and the same are hereby, denied.

F. E. FULLER,  
District Judge. [50]

[Title of Court and Cause.]

**Order Denying Motion of Defendants Wood, McGinn and Healey to Strike Amended Complaint.**

Now, on this day the motion of the defendants, Wood, McGinn and Healy, to strike the amended complaint coming on for hearing, after argument by the respective attorneys, O. L. Rider, for plaintiff, and A. R. Heilig, for said defendants,

It is ordered, that said motion be, and same is hereby, denied.

F. E. FULLER,  
District Judge. [51]

**[Motion of E. R. Peoples, to Strike Amended Complaint.]**

**MOTION TO STRIKE.**

[Title of Court and Cause.]

Comes now, E. R. Peoples, one of the defendants in the above-entitled action, appearing for himself separately, and moves this Court as follows, to wit:

(1) That, if the motion of this moving defendant heretofore filed to strike from the files the amended complaint in the above-entitled action is denied by this Court, that this Court then strike from said amended complaint each of the following described paragraphs, for the reason that the matters and things therein set forth, and set forth in each of said paragraphs separately, are sham, frivolous, irrelevant, and redundant, and for the further reason that plaintiff has attempted to set forth several causes of

action against each of the defendants therein named, without setting forth each cause of action separately as prescribed by law, to wit:

Paragraph 4, paragraph 5, paragraph 6, paragraph 7, paragraph 8, paragraph 9, paragraph 10, paragraph 11, paragraph 12, paragraph 13, paragraph 14, paragraph 15, paragraph 16, paragraph 17, paragraph 18, paragraph 19, paragraph 20, paragraph 21, paragraph 22, paragraph 23, paragraph 24, paragraph 25, paragraph 26, paragraph 27, paragraph 28, paragraph 29, paragraph 30, paragraph 31, paragraph 32, paragraph 33, paragraph 34, paragraph 35, paragraph 36, paragraph 37, paragraph 38, and paragraph 39.

Wherefore this moving defendant prays that each of said paragraphs considered separately be stricken from said amended complaint.

McGOWAN & CLARK,  
Attorneys for Moving Defendant.

[Endorsed]: No. 1756. In the United States District Court, Territory of Alaska Fourth Division, F. G. Noyes, as Rec'r. etc., Plaintiff, vs. John A. Jesson et al., Defendants. Motion to strike of E. R. Peoples.

Filed in the District Court, Territory of Alaska, 4th Div., May 28, 1913, C. C. Page, Clerk by H. C. Green, Deputy. [52]

**[Motion of George Preston, to Strike Amended  
Complaint.]**

[Title of Court and Cause.]

**MOTION TO STRIKE.**

Comes now, George Preston, one of the defendants in the above-entitled action, appearing for himself separately, and moves this Court as follows, to wit:

(1) That, if the motion of this moving defendant heretofore filed to strike from the files the amended complaint in the above-entitled action is denied by this Court, that this Court then strike from said amended complaint each of the following described paragraphs, for the reason that the matters and things therein set forth, and set forth in each of said paragraphs separately, are sham, frivolous, irrelevant, and redundant, and for the further reason that plaintiff has attempted to set forth several causes of action against each of the defendants therein named, without setting forth each cause of action separately as prescribed by law, to wit:

Paragraph 4, paragraph 5, paragraph 6, paragraph 7, paragraph 8, paragraph 9, paragraph 10, paragraph 11, paragraph 12, paragraph 13, paragraph 14, paragraph 15, paragraph 16, paragraph 17, paragraph 18, paragraph 19, paragraph 20, paragraph 21, paragraph 22, paragraph 23, paragraph 24, paragraph 25, paragraph 26, paragraph 27, paragraph 28, paragraph 29, paragraph 30, paragraph 31, paragraph 32, paragraph 33, paragraph 34, paragraph 35, paragraph 36, paragraph 37, paragraph 38, and paragraph 39.



Wherefore this moving defendant prays that each of said paragraphs considered separately be stricken from said amended complaint.

McGOWAN & CLARK,  
Attorneys for Moving Defendant.

[Endorsed]: No. 1756. In the United States District Court, Territory of Alaska, Fourth Division, F. C. Noyes, as Recr., etc., Plaintiff, vs. John A. Jesson et al., Defendants. Motion to Strike of George Preston.

Filed in the District Court, Territory of Alaska, 4th Div., May 28, 1913, C. C. Page, Clerk by H. C. Green, Deputy. [53]

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**[ Motion of John A. Jesson to Strike Amended  
Complaint.]**

[Title of Court and Cause.]

**MOTION TO STRIKE.**

Comes now, John A. Jesson, one of the defendants in the above-entitled action, appearing for himself separately, and moves this Court as follows, to wit:

(1) That, if the motion of this moving defendant heretofore filed to strike from the files the amended complaint in the above-entitled action is denied by this Court, that this Court then strike from said amended complaint each of the following described paragraphs, for the reason that the matters and things therein set forth, and set forth in each of said paragraphs separately, are sham, frivolous, irrelevant, and redundant, and for the further reason that plaintiff has attempted to set forth several causes of action against each of the defendants therein named,

without setting forth each cause of action separately as prescribed by law, to wit:

Paragraph 4, paragraph 5, paragraph 6, paragraph 7, paragraph 8, paragraph 9, paragraph 10, paragraph 11, paragraph 12, paragraph 13, paragraph 14, paragraph 15, paragraph 16, paragraph 17, paragraph 18, paragraph 19, paragraph 20, paragraph 21, paragraph 22, paragraph 23, paragraph 24, paragraph 25, paragraph 26, paragraph 27, paragraph 28, paragraph 29, paragraph 30, paragraph 31, paragraph 32, paragraph 33, paragraph 34, paragraph 35, paragraph 36, paragraph 37, paragraph 38, and paragraph 39.

Wherefore this moving defendant prays that each of said paragraphs considered separately be stricken from said amended complaint.

McGOWAN & CLARK,  
Attorneys for moving defendant.

[Endorsed]: No. 1756. In the United States District Court, Territory of Alaska, Fourth Division, F. G. Noyes, as Rec'r. etc., Plaintiff, vs. John A. Jesson et al., Defendants. Motion to Strike of John A. Jesson.

Filed in the District Court, Territory of Alaska, 4th Div. May 28, 1913. C. C. Page, Clerk. By H. C. Green, Deputy. [54]

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**[Motion of John A. Clark, to Strike Amended Complaint.]**

[Title of Court and Cause.]

MOTION TO STRIKE.

Comes now John A. Clark, one of the defendants

in the above-entitled action, appearing for himself separately, and moves this Court as follows, to wit:

(1) That, if the motion of this *moving* defendant heretofore filed to strike from the files the amended complaint in the above-entitled action is denied by this Court, that this Court then strike from said amended complaint each of the following described paragraphs, for the reason that the matters and things therein set forth, and set forth in each of said paragraphs separately, are sham, frivolous, irrelevant, and redundant, and for the further reason that plaintiff has attempted to set forth several causes of action against each of the defendants, therein named, without setting forth each cause of action separately as prescribed by law, to wit:

Paragraph 4, paragraph 5, paragraph 6, paragraph 7, paragraph 8, paragraph 9, paragraph 10, paragraph 11, paragraph 12, paragraph 13, paragraph 14, paragraph 15, paragraph 16, paragraph 17, paragraph 18, paragraph 19, paragraph 20, paragraph 21, paragraph 22, paragraph 23, paragraph 24, paragraph 25, paragraph 26, paragraph 27, paragraph 28, paragraph 29, paragraph 30, paragraph 31, paragraph 32, paragraph 33, paragraph 34, paragraph 35, paragraph 36, paragraph 37, paragraph 38 and paragraph 39.

Wherefore this moving defendant prays that each of said paragraphs considered separately be stricken from said amended complaint.

McGOWAN & CLARK,  
Attorneys for Moving Defendants.

[Endorsed]: No. 1756. In the United States District Court, Territory of Alaska, Fourth Division.

F. C. Noyes, as Recr., etc., Plaintiff, vs. John A. Jesson et al., Defendants. Motion to Strike of John A. Clark. Filed in the District Court, Territory of Alaska, 4th Div. May 28, 1913. C. C. Page, Clerk. By H. C. Green, Deputy. [55]

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**[Motion of Raymond Brumbaugh, to Strike  
Amended Complaint.]**

[Title of Court and Cause.]

**MOTION TO STRIKE.**

Comes now, Raymond Brumbaugh, one of the defendants in the above-entitled action, appearing for himself separately, and moves this Court as follows, to wit:

(1) That, if the motion of this moving defendant heretofore filed to strike from the files the amended complaint in the above-entitled action is denied by this Court, that this Court then strike from said amended complaint each of the following described paragraphs, for the reason that the matters and things therein set forth, and set forth in each of said paragraphs separately, are sham, frivolous, irrelevant, and redundant, and for the further reason that plaintiff has attempted to set forth several causes of action against each of the defendants, therein named, without setting forth each cause of action separately as prescribed by law, to wit:

Paragraph 4, paragraph 5, paragraph 6, paragraph 7, paragraph 8, paragraph 9, paragraph 10, paragraph 11, paragraph 12, paragraph 13, paragraph 14, paragraph 15, paragraph 16, paragraph 17, paragraph 18, paragraph 19, paragraph 20, paragraph 21, para-



graph 22, paragraph 23, paragraph 24, paragraph 25, paragraph 26, paragraph 27, paragraph 28, paragraph 29, paragraph 30, paragraph 31, paragraph 32, paragraph 33, paragraph 34, paragraph 35, paragraph 36, paragraph 37, paragraph 38, paragraph 39.

Wherefore this moving defendant prays that each of said paragraphs considered separately be stricken from said amended complaint.

McGOWAN & CLARK,  
Attorneys for Moving Defendants.

[Endorsed]: No. 1756. In the United States District Court, Territory of Alaska, Fourth Division. F. G. Noyes as Recr., etc., Plaintiff, vs, John A. Jesson et al., Defendants. Motion to Strike of R. Brumbaugh. Filed in the District Court, Territory of Alaska, 4th Div. May 28, 1913. C. C. Page, Clerk. By H. C. Green, Deputy. [56]

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**[Motion of James W. Hill to Strike Amended  
Complaint.]**

[Title of Court and Cause.]

**MOTION TO STRIKE.**

Comes now, James W. Hill, one of the defendants in the above-entitled action, appearing for himself separately, and moves this Court as follows, to wit:

(1) That, if the motion of this moving defendant heretofore filed to strike from the files the amended complaint in the above-entitled action is denied by this Court, that this Court then strike from said amended complaint each of the following described paragraphs, for the reason that the matters and

things therein set forth, and set forth in each of said paragraphs separately, are sham, frivolous, irrelevant, and redundant, and for the further reason that plaintiff has attempted to set forth several causes of action against each of the defendants therein named, without setting forth each cause of action separately as prescribed by law, to wit:

Paragraph 4, paragraph 5, paragraph 6, paragraph 7, paragraph 8, paragraph 9, paragraph 10, paragraph 11, paragraph 12, paragraph 13, paragraph 14, paragraph 15, paragraph 16, paragraph 17, paragraph 18, paragraph 19, paragraph 20, paragraph 21, paragraph 22, paragraph 23, paragraph 24, paragraph 25, paragraph 26, paragraph 27, paragraph 28, paragraph 29, paragraph 30, paragraph 31, paragraph 32, paragraph 33, paragraph 34, paragraph 35, paragraph 36, paragraph 37, paragraph 38, and paragraph 39.

Wherefore this moving defendant prays that each of said paragraphs considered separately be stricken from said amended complaint.

McGOWAN & CLARK,  
Attorneys for Moving Defendant.

[Endorsed]: No. 1756. In the United States District Court, Territory of Alaska, Fourth Division. F. G. Noyes as Recr., etc., Plaintiff, vs. John A. Jesson et al., Defendants. Motion to Strike of James W. Hill. Filed in the District Court, Territory of Alaska, 4th Div. May 28, 1913. C. C. Page, Clerk.

By H. C. Green, Deputy. [57]

Due service hereof admitted this May 28, 1913.

O. L. RIDER,

Attorney for Plff. [58]

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[Title of Court and Cause.]

**Order Denying Motions of Defendants J. A. Jesson,  
Hill, Preston, Clark, Brumbaugh and Peoples to  
Strike Portions of Amended Complaint.**

Now, on this day the motions of defendants, J. A. Jesson, Hill, Preston, Clark, Brumbaugh, and Peoples to strike portions of the amended complaint coming on for hearing, after argument by the respective attorneys, O. L. Rider, for plaintiff, and John A. Clark for said defendants.

IT IS ORDERED that said motions be, and same are hereby, denied.

F. E. FULLER,

District Judge. [59]

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[Title of Court and Cause.]

**Demurrer of R. C. Wood to Amended Complaint.**

Comes now, R. C. Wood, one of the defendants in the above-entitled action and without waiving his motion heretofore made that the several alleged causes of action in the amended complaint herein be separately stated, demurs to the amended complaint herein upon the following ground:

I.

That it appears upon the face of said complaint that there is a defect of parties defendant, in this

that E. T. Barnette is a necessary party defendant but has not been made a party defendant.

## II.

That said complaint does not state facts sufficient to constitute a cause of action against the defendant, R. C. Wood.

## III.

That several causes of action have been improperly united in said complaint not one of which affects all the parties defendant and all of which alleged cause of action do not belong to the same class, in this that among many other alleged causes of action set forth therein, said complaint set forth in paragraph 13 an alleged cause of action for damages for false representations regarding the paid-up capital stock of the Fairbanks Banking Company; in paragraph 19 an alleged cause of action for wrongfully and fraudulently causing and permitting five hundred and sixty shares of said stock to be surrendered and money or notes to be paid therefor; in paragraph 21 an alleged cause of action for \$39,642.81 accrued interest wrongfully paid to the said Wood, E. T. Barnette and J. W. Hill; in paragraph 23 an alleged cause of action for the fraudulent payment by the Fairbanks [60] Banking Company, a corporation, of \$100,000.00 bonus for the stock of the Washington-Alaska Bank, at a time when it appears from said complaint that said Wood was neither officer nor director of said Fairbanks Banking Company, and had nothing to do with said transaction; in paragraph 27 an alleged cause of action for wrongfully and fraudulently declaring and paying a dividend



by said Fairbanks Banking Company, amounting to \$33,720.00; in paragraph 28 an alleged cause of action for \$25,000.00 damages sustained by the sale of the stock of the First National Bank to the said Wood and J. L. McGinn; in paragraph 29 an alleged cause of action based upon the withdrawal by the **said Barnette** of \$200,000.00 from the funds of said **bank, at a time** when it appears from said complaint that said Wood was neither an officer nor a director of said Fairbanks Banking Company and had nothing to do with said transaction.

IV.

That this action has not been commenced within two years after the several alleged causes of action accrued.

J. L. MCGINN,

A. R. HEILIG,

Attorneys for Defendant R. C. Wood.

Service by copy admitted this 29 day of May, 1913.

O. L. RIDER,

Attorney for Plaintiff.

[Endorsed]: No. 1756. In the District Court for the Territory of Alaska, 4th Division. Noyes, Plaintiff, vs. Jesson et al., Defendants. Separate Demurrers of J. L. McGinn, R. C. Wood, J. A. Healey.

Filed in the District Court, Territory of Alaska, 4th Div. May 29, 1913. C. C. Page, Clerk. By H. C. Green, Deputy. [61]

[Title of Court and Cause.]

**Demurrer of J. A. Healey to Amended Complaint.**

Comes, now, J. A. Healey, one of the defendants in the above-entitled action and without waiving his motion heretofore made that the several alleged causes of action in the amended complaint herein be separately stated, demurs to the amended complaint herein upon the following grounds:

I.

That it appears upon the face of said complaint that there is a defect of parties defendant, in this that E. T. Barnette is a necessary party defendant but has not been made a party defendant.

II.

That said complaint does not state facts sufficient to constitute a cause of action against the defendant, J. A. Healey.

III.

That several causes of action have been improperly united in said complaint not one of which affects all the parties defendant and all of which alleged causes of action do not belong to the same class, in this that among many other alleged causes of action set forth therein, said complaint sets forth in paragraph 13 an alleged cause of action for damages for false representations regarding the paid-up capital stock of the Fairbanks Banking Company, a corporation, at a time when it appears from the complaint that he was neither an officer nor director of said bank, in paragraph 19 an alleged cause of action permitting five hundred and sixty

shares of stock to be surrendered and money or notes to be given therefore at a time when it appears that said Healey was neither an officer nor director of said bank; in paragraph 21 an alleged cause of action for \$39,642.81 [62] accrued interest wrongfully paid to R. C. Wood, E. T. Barnette and J. W. Hill, at a time when it appears from the complaint that said Healey was neither an officer nor director of said bank; in paragraph 23 an alleged cause of action for the fraudulent payment by the Fairbanks Banking Company, a corporation, of \$100,000.00 bonus for the stock of the Washington-Alaska Bank, at a time when it appears from said complaint that the said Healey was neither an officer nor director of said bank and had nothing to do with said transaction; in paragraph 27 an alleged cause of action for wrongfully and fraudulently declaring and paying a dividend by the said Fairbanks Banking Company, amounting to \$33,720.00 at a time when it appears from the complaint that said Healey was neither an officer nor director of said bank; in paragraph 28 an alleged cause of action for \$25,000.00 damages sustained by the sale of the stock of the First National Bank to R. C. Wood and J. L. McGinn, at a time when said Healey was neither an officer nor director of said bank; in paragraph 29 an alleged cause of action based upon the withdrawal by the said E. T. Barnette of \$200,000.00 from the funds of said bank.

J. L. MCGINN,

A. R. HEILIG,

Attorneys for Defendant J. A. Healey.

Service by copy admitted this 29 day of May, 1913.

O. L. RIDER,  
Attorney for Plaintiff.

[Endorsed]: No. 1756. In the United States District Court, Territory of Alaska, Fourth Division. Noyes, Plaintiff, vs. Jesson et al., Defendants. Separate Demurrers of J. L. McGinn, R. C. Wood, J. A. Healey.

Filed in the District Court, Territory of Alaska, 4th Div. May 29, 1913. C. C. Page, Clerk. By H. C. Green, Deputy. [63]

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[Title of Court and Cause.]

**Demurrer of J. L. McGinn to Amended Complaint.**

Comes now, J. L. McGinn, one of the defendants in the above-entitled action and without waiving his motion heretofore made that the several alleged causes of action in the amended complaint herein be separately stated, demurs to the amended complaint herein upon the following grounds:

I.

That it appears upon the face of said complaint that there is a defect of parties defendant, in this that E. T. Barnette is a necessary party defendant but has not been made a party defendant.

II.

That said complaint does not state facts sufficient to constitute a cause of action against the defendant, J. L. McGinn.



## III.

That several causes of action have been improperly united in said complaint not one of which affects all the parties defendant and all of which alleged causes of action do not belong to the same class, in this that among many other alleged causes of action set forth therein, said complaint sets forth in paragraph 13 an alleged cause of action for damages for false representations regarding the paid-up capital stock of the Fairbanks Banking Company, a corporation; in paragraph 19 an alleged cause of action for wrongfully and fraudulently causing and permitting five hundred and sixty shares of stock to be surrendered and money or notes to be paid therefore, during a period in part of which said McGinn was neither an officer nor director of said bank; in paragraph 21 an alleged cause [64] of action for \$39,642.81 accrued interest wrongfully paid to R. C. Wood, E. T. Barnette and J. W. Hill, at a time when the said McGinn was neither an officer nor director of said bank; in paragraph 23 an alleged cause of action for the fraudulent payment by the Fairbanks Banking Company, a corporation, of \$100,000.00 bonus for the stock of the Washington-Alaska Bank; in paragraph 27 an alleged cause of action for wrongfully and fraudulently declaring and paying a dividend by said Fairbanks Banking Company amounting to \$33,720.00 to the stockholders of said bank; in paragraph 28 an alleged cause of action for \$25,000.00 damages sustained by the sale of the stock of the First National Bank to the said McGinn and R. C. Wood; in paragraph 29 an alleged cause of

action based upon the withdrawal by the said E. T. Barnette of \$200,000.00 from the funds of said bank at a time when it appears from said complaint that the said McGinn was neither an officer nor director of said bank, Fairbanks Banking Company, and had nothing to do with said transaction.

J. L. MCGINN,

A. R. HEILIG,

Attorneys for Defendant, J. L. McGinn.

Service by copy admitted this 29 day of May, 1913.

O. L. RIDER,

Attorney for Plaintiff.

[Endorsed]: No. 1756. In the District Court for the Territory of Alaska, 4 Division. Noyes, Plaintiff, vs. Jesson et al., Defendants. Separate Demurrers of J. L. McGinn, R. C. Wood, J. A. Healey.

Filed in the District Court, Territory of Alaska, 4th Div. May 29, 1913. C. C. Page, Clerk. By H. C. Green, Deputy. [65]

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[Title of Court and Cause.]

**Demurrer [of E. R. Peoples, to Amended Complaint.]**

Now comes E. R. Peoples, appearing for himself separately, and demurs to plaintiff's amended complaint on file in the above-entitled action, on the following grounds, to wit:

1. That there is a defect of parties defendant in said action, in that it appears affirmatively from the plaintiff's said amended complaint that E. T. Barnett should be joined as a part defendant, in order

fully to determine all the issues presented in this action.

2. That several causes of action have been improperly united in said amended complaint, in that it appears therefrom that there are twelve separate and distinct causes of action set forth therein, that are not stated separately as required by law and are improperly united.

3. That said amended complaint does not state facts sufficient to constitute a cause of action against this defendant and does not contain facts sufficient to constitute a cause of action against this defendant in any alleged separate cause of action set forth in said amended complaint as joined by plaintiff and declared to be one cause of action.

4. That this action has not been commenced against this defendant within the time limited by the Codes of Alaska, as said amended complaint shows affirmatively that any alleged wrongful act committed by this defendant was committed more than two years prior to the time of the institution of this action, and is barred by the provisions of paragraph 1 of section 8 of part 4 of Carter's Annotated Codes of Alaska.

Wherefore, this demurring defendant prays that plaintiff [66] take nothing for the alleged causes of action set forth in the amended complaint herein and that this demurring defendant go hence with his costs.

McGOWAN & CLARK,  
Attorneys for Demurring Defendant.

Due service hereof admitted this May 28, 1913.

O. L. RIDER,

Attorney for Plff.

[Endorsed]: No. 1756. In the United States District Court, Territory of Alaska, Fourth Division. F. G. Noyes as Rec'r. etc., Plaintiff, vs. John A. Jesson et al., Defendants. Demurrer of E. R. Peoples.

Filed in the District Court, Territory of Alaska, 4th Div. May 29, 1913. C. C. Page, Clerk. By H. C. Green, Deputy. [67]

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[Title of Court and Cause.]

**Demurrer [of James W. Hill, to Amended  
Complaint.]**

Comes now, James W. Hill, appearing for himself separately, and demurs to plaintiff's amended complaint on file herein, on the following grounds, to wit:

1. That there is a defect of parties defendant in said action, as shown by said amended complaint, wherein it affirmatively appears that, in order to determine all the issues raised in this cause, E. T. Barnette should be joined as a party defendant.

2. That said amended complaint does not state facts sufficient to constitute a cause of action against this defendant in any alleged separate cause of action set forth in said amended complaint as joined by plaintiff and declared to be one cause of action.

3. That several causes of action have been improperly united in said amended complaint, as it

affirmatively appears from said amended complaint that this demurring defendant is accused of several distinct acts of malfeasance in office, as follows:

(a) In paragraph 8 of said amended complaint with purchasing Gold Bar Lumber Company stock for the sum of \$93,881.11 more than the real value thereof.

(b) In paragraph 9 with taking over worthless uncollectible notes and bills receivable in the sum of \$55,500.00.

(c) In paragraph 10 with accepting as payment on stock of the corporation worthless and uncollectible notes to the amount of \$22,982.33.

(d) In paragraph 13 with falsely representing the paid-in capital of the Fairbanks Banking Company to amount to the [68] sum of \$300,000.00.

(e) In paragraph 19 with reducing stock of the corporation by accepting the return of stock notes in the sum of approximately \$46,000.00.

(f) In paragraph 21 with paying to Barnette, Hill and Wood accrued interest on notes transferred to the Fairbanks Banking Company in the sum of \$39,483.50.

(g) In paragraph 23 with purchasing the Washington-Alaska Bank for the sum of \$100,000.00 greater than the value thereof.

(h) In paragraphs 25 and 26 with unlawfully declaring a dividend to the stockholders of the Fairbanks Banking Company amounting to twenty per cent. on \$168,600.00 of issued capital stock.

(i) In paragraph 27 with paying in dividends a portion of the capital stock of said corporation and



money of the depositors.

(j) In paragraph 28 with selling the First National Bank to R. C. Wood and John L. McGinn for the amount paid therefor without any profit.

(k) In paragraph 29 with permitting E. T. Barnette to withdraw deposits of \$200,000.00.

(l) In paragraph 30 with wrongfully carrying on the books of the bank Washington-Alaska Bank stock at a premium of \$75,000.00 etc.

Wherefore this demurring defendant prays that plaintiff take nothing for the alleged causes of action set forth in the amended complaint herein and that this demurring defendant go hence with his costs.

McGOWAN & CLARK,

Attorneys for Demurring Defendant.

Due service hereof admitted this May 28, 1913.

O. L. RIDER,

Attorney for Plff.

[Endorsed]: No. 1756. In the United States District Court, Territory of Alaska, Fourth Division. F. G. Noyes as Recr., etc., Plaintiff, vs. John A. Jesson et al., Defendants. Demurrer of James W. Hill.

Filed in the District Court, Territory of Alaska, 4th Div., May 29, 1913. C. C. Page, Clerk. By H. C. Green, Deputy. [69]

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[Title of Court and Cause.]

**Demurrer [of John A. Jesson to Amended  
Complaint].**

Comes now, John A. Jesson, appearing for himself

separately, and demurs to plaintiff's amended complaint on file herein, on the following grounds, to wit:

1. That there is a defect of parties defendant in said action, as shown by said amended complaint, wherein it affirmatively appears that, in order to determine all the issues raised in this cause, E. T. Barnette should be joined as a party defendant.

2. That said amended complaint does not state facts sufficient to constitute a cause of action against this defendant in any alleged separate cause of action set forth in said amended complaint as joined by plaintiff and declared to be one cause of action.

3. That several causes of action have been improperly united in said amended complaint, as it affirmatively appears from said amended complaint that this demurring defendant is accused of several distinct acts of malfeasance in office, as follows:

(a) In paragraph 8 of said amended complaint with purchasing Gold Bar Lumber Company stock for the sum of \$93,881.11 more than the real value thereof.

(b) In paragraph 9 with taking over worthless uncollectible notes and bills receivable in the sum of \$55,500.00.

(c) In paragraph 10 with accepting as payment on stock of the corporation worthless and uncollectible notes to the amount of \$22,982.33.

(d) In paragraph 13 with falsely representing the paid-in capital of the Fairbanks Banking Company to amount to the [70] sum of \$300,000.00.

(e) In paragraph 19 with reducing stock of the

corporation by accepting the return of stock notes in the sum of approximately \$46,000.00.

(f) In paragraph 21 with paying to Barnette, Hill and Wood accrued interest on notes transferred to the Fairbanks Banking Company in the sum of \$39,483.50.

(g) In paragraph 23 with purchasing the Washington-Alaska Bank for the sum of \$100,000.00 greater than the value thereof.

(h) In paragraphs 25 and 26 with unlawfully declaring a dividend to the stockholders of the Fairbanks Banking Company amounting to twenty per cent. on \$168,600.00 of issued capital stock.

(i) In paragraph 27 with paying in dividends a portion of the capital stock of said corporation and money of the depositors.

(j) In paragraph 28 with selling the First National Bank to R. C. Wood and John L. McGinn for the amount paid therefor without any profit.

(k) In paragraph 29 with permitting E. T. Barnette to withdraw deposits of \$200,000.00.

(l) In paragraph 30 with wrongfully carrying on the books of the bank Washington-Alaska Bank stock at a premium of \$75,000 etc.

Wherefore this demurring defendant prays that plaintiff take nothing for the alleged causes of action set forth in the amended complaint herein and that this demurring defendant go hence with his costs.

McGOWAN & CLARK,  
Attorneys for Demurring Defendant.

Due service hereof admitted this May 28, 1913.

O. L. RIDER,  
Attorney for Plff.

[Endorsed]: No. 1756. In the United States District Court, Territory of Alaska, Fourth Division. F. G. Noyes, as Recr., etc., Plaintiff, vs. John A. Jesson et al., Defendants. Demurrer of John A. Jesson.

Filed in the District Court, Territory of Alaska, 4th Div., May 29, 1913. C. C. Page, Clerk. By H. C. Green, Deputy. [71]

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[Title of Court and Cause.]

**Demurrer [of John A. Clark to Amended  
Complaint.**

Now, comes the defendant, John A. Clark, appearing for himself separately and demurs to the plaintiff's complaint on file in the above-entitled action, on the following grounds, to wit:

(1) That there is a defect of parties defendant in said action in that it appears affirmatively from plaintiff's amended complaint on file in this action that E. T. Barnette should be joined as a party defendant in order fully to determine all the issues presented by said amended complaint.

(2) That several causes of action have been improperly united in said complaint, in that it appears from said complaint that there are twelve or more separate and distinct alleged causes of action set forth in said complaint, alleged separate and distinct sets of alleged malfeasance on the part of the

directors, and that they are not stated separately as required by law and are improperly united.

(3) That said amended complaint does not state facts sufficient to constitute a cause of action or any cause of action against this defendant in any of the alleged acts of malfeasance alleged to have been committed by said directors of said bank at any time, as it appears from said amended complaint that demurring defendant was not a director when any alleged acts of malfeasance were performed by the directors of said bank, and that he could not be held liable therefor.

Wherefore, this demurring defendant prays that plaintiff [72] take nothing for the alleged causes of action set forth in his amended complaint herein and that this demurring defendant go home with his costs.

McGOWAN & CLARK,

Attorneys for Demurring Defendant.

Due service hereof admitted this May 28, 1913,

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Attorney for Plff.

[Endorsed]: No. 1756. In the United States District Court, Territory of Alaska, Fourth Division. F. G. Noyes, as Recr., etc., Plaintiff, vs. John A. Jesson et al., Defendants. Demurrer of John A. Clark.

Filed in the District Court, Territory of Alaska, 4th Div. May 29, 1913. C. C. Page, Clerk. By H. C. Green, Deputy. [73]



[Title of Court and Cause.]

**Demurrer [of George Preston to Amended  
Complaint].**

Now, comes the defendant George Preston, appearing for himself separately and demurs to the plaintiff's complaint on file in the above-entitled action, on the following grounds, to wit:

(1) That there is a defect of parties defendant in said action in that it appears affirmatively from plaintiff's amended complaint on file in this action that E. T. Barnette should be joined as a party defendant in order fully to determine all the issues presented by said amended complaint.

(2) That several causes of action have been improperly united in said complaint, in that it appears from said complaint that there are twelve or more separate and distinct alleged causes of action set forth in said complaint, alleged separate and distinct sets of alleged malfeasance on the part of the directors, and that they are not stated separately as required by law and are improperly united.

(3) That said amended complaint does not state facts sufficient to constitute a cause of action or any cause of action against this defendant in any of the alleged acts of malfeasance alleged to have been committed by said directors of said bank at any time, as it appears from said amended complaint that demurring defendant was not a director when any alleged acts of malfeasance were performed by the directors of said bank, and that he could not be held liable therefor.

Wherefore, this demurring defendant prays that plaintiff [74] take nothing for the alleged causes of action set forth in his amended complaint herein and that this demurring defendant go hence with his costs.

McGOWAN & CLARK,

Attorneys for Demurring Defendant.

Due service thereof admitted this May 28, 1913.

O. L. RIDER,

Attorney for Plff.

[Endorsed]: No. 1756. In the United States District Court, Territory of Alaska, Fourth Division. F. C. Noyes, as Recr., etc., Plaintiff, vs. John A. Jes-son et al., Defendants. Demurrer of George Pres-ton.

Filed in the District Court, Territory of Alaska, 4th Div. May 29, 1913. C. C. Page, Clerk. By H. C. Green, Deputy. [75]

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[Title of Court and Cause.]

**Demurrer [of Raymond Brumbaugh to Amended Complaint].**

Comes now, Raymond Brumbaugh, appearing for himself separately, and demurs to plaintiff's amended complaint on file herein, on the following grounds, to wit:

1. That there is a defect of parties defendant in said action, as shown by said amended complaint, wherein it affirmatively appears that, in order to determine all the issues raised in this cause, E. T. Barnette should be joined as a party defendant.

2. That said amended complaint does not state facts sufficient to constitute a cause of action against this defendant in any alleged separate cause of action set forth in said amended complaint as joined by plaintiff and declared to be one cause of action.

3. That several causes of action have been improperly united in said amended complaint, as it affirmatively appears from said amended complaint that this demurring defendant is accused of several distinct acts of malfeasance in office, as follows:

(a) In paragraph 8 of said amended complaint with purchasing Gold Bar Lumber Company stock for the sum of \$93,881.11 more than the real value thereof.

(b) In paragraph 9 with taking over worthless uncollectible notes and bills receivable in the sum of \$55,500.00.

(c) In paragraph 10 with accepting as payment on stock of the corporation worthless and uncollectible notes to the amount of \$22,982.33.

(d) In paragraph 13 with falsely representing the paid in capital of the Fairbanks Banking Company to amount to the [76] sum of \$300,000.00.

(e) In paragraph 19 with reducing stock of the corporation by accepting the return of stock notes in the sum of approximately \$46,000.00.

(f) In paragraph 21 with paying to Barnette, Hill and Wood accrued interest on notes transferred to the Fairbanks Banking Company in the sum of \$39,483.50.

(g) In paragraph 23 with purchasing the Wash-

ington-Alaska Bank for the sum of \$100,000.00 greater than the value thereof.

(h) In paragraphs 25 and 26 with unlawfully declaring a dividend to the stockholders of the Fairbanks Banking Company amounting to twenty per cent. on \$168,600.00 of issued capital stock.

(i) In paragraph 27 with paying in dividends a portion of the capital stock of said corporation and money of the depositors.

(j) In paragraph 28 with selling the First National Bank to R. C. Wood and John L. McGinn for the amount paid therefor without any profit.

(k) In paragraph 29 with permitting E. T. Barnette to withdraw deposits of \$200,000.00.

(l) In paragraph 30 with wrongfully carrying on the books of the bank Washington-Alaska Bank stock at a premium of \$75,000.00 etc.

Wherefore this demurring defendant prays that plaintiff take nothing for the alleged causes of action set forth in the amended complaint herein and that this demurring defendant go hence with his costs.

McGOWAN & CLARK,

Attorneys for Demurring Defendant.

Due service hereof admitted this May 28, 1913.

O. L. RIDER,

Attorney for Plff.

[Endorsed]: No. 1756. In the United States District Court, Territory of Alaska, Fourth Division. F. C. Noyes, as Recr., etc., Plaintiff, vs. John A. Jesson et al., Defendants. Demurrer of Raymond Brumbaugh.

Filed in the District Court, Territory of Alaska,  
4th Div. May 29, 1913. C. C. Page, Clerk. By H.  
C. Green, Deputy. [77]

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[Title of Court and Cause.]

**Order Overruling Demurrer of Defendants, McGinn,  
Wood and Healy [to Amended Complaint, etc.].**

Now, on this day the demurrers of the defendants McGinn, Wood and Healey, coming on to be heard, after argument by the respective attorneys, O. L. Rider, for plaintiff, and A. R. Heilig, for said defendants.

IT IS ORDERED that said demurrers be, and same are hereby overruled, and said defendants are allowed thirty (30) days within which to file their answers herein.

F. E. FULLER,  
District Judge. [78]

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[Title of Court and Cause.]

**Order Overruling Demurrer of Defendants,  
Brumbaugh, Preston, Clark, J. A. Jesson, Hill  
and Peoples [to Amended Complaint, etc.].**

Now, on this day the demurrers of the defendants Brumbaugh, Preston, Clark, J. A. Jesson, Hill and Peoples, coming on to be heard, after argument by the respective attorneys, O. L. Rider, for plaintiff, and John A. Clark, for said defendants.

IT IS ORDERED that said demurrers be, and the same are hereby, overruled, and said defendants are



given thirty (30) days within which to file their answers herein.

F. E. FULLER,  
District Judge. [79]

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[Title of Court and Cause.]

**Separate Answer of Defendants R. C. Wood, J. A. Healey and John L. McGinn.**

Come now, the defendants R. C. Wood, J. A. Healey and John L. McGinn, and, answering the Amended Complaint of the plaintiff on file herein, say: [80]

I.

Answering paragraph 3 of said amended complaint, these defendants deny that E. T. Barnette, R. C. Wood, and James W. Hill circulated, or caused to be circulated, in the city of Fairbanks, or vicinity, or elsewhere, stock subscription lists, subscribing to the capital stock of said corporation, which said stock subscription lists, omitting the signatures, were, or are, in words and figures as set forth in paragraph 3 of said amended complaint.

II.

Answering paragraph 4 of said amended complaint, the defendants admit that said E. T. Barnette signed said subscription list for four hundred forty (440) shares of capital stock of said corporation, and that James W. Hill signed said subscription list for two hundred and twenty (220) shares of said capital stock, but deny that the same was signed or subscribed by the said R. C. Wood for two hundred and

twenty (220) shares or any shares. And deny that said James W. Hill, R. C. Wood, and E. T. Barnette caused said subscription lists to be circulated or that they circulated the same.

### III.

Answering paragraph 5 of said amended complaint, defendants deny that the first meeting of the incorporators or subscribers to the capital stock of the Fairbanks Banking Company, a corporation, was held at Fairbanks on 12th day of March, 1908, but allege that said first meeting of the incorporators and subscribers to the capital stock of said Fairbanks Banking Company, a corporation, was held up on the 8th day of February, 1908; deny that on the 12th day of March, 1908, a board of twelve directors for said corporation, named or selected by said E. T. Barnette, were elected; deny that the said E. T. Barnette named or selected said board of directors, otherwise, than by placing the names of said [81] persons in nomination at the meeting of the subscribers and stockholders held February 8th, 1908.

### IV.

Answering paragraph 6 of said amended complaint, these defendants deny that, on 13th day of March, 1908, said board of directors authorized the acquisition or purchase of the Fairbanks Banking Company, a partnership, or the assets in business of said Fairbanks Banking Company, a partnership, otherwise than as in the further, separate, and affirmative defense of these defendants hereinafter set forth. Deny, except as in the further and separate answer of these defendants hereinafter set forth, that

the purchase or acquisition of the assets or business of the Fairbanks Banking Company, a partnership, or the terms thereof, were reduced to writing in a contract signed or executed by the parties, dated March 16th, 1908, and deny that a true copy of the same is attached to the amended complaint and marked "Exhibit 1."

## V.

Admit that there were issued to E. T. Barnette two hundred and sixty (260) shares of the capital stock of said corporation, but deny that the same was done in accordance with said contract marked "Exhibit 1." Admit that there was one hundred and thirty (130) shares of the capital stock of said corporation issued to James W. Hill, but deny that the same was in accordance with the contract marked "Exhibit 1," or otherwise than as hereinafter set forth in the further and separate answer of these defendants. Deny that there was ever issued to R. C. Wood one hundred and thirty (130) shares of the capital stock of said Fairbanks Banking Company. Admit that the assets of said copartnership, enumerated and described in said contract, "Exhibit 1," were transferred to said corporation, but deny that the same was done in accordance with said contract marked "Exhibit 1," or otherwise than as set forth in the further and separate answer of these defendants.

[82]

## VI.

Answering paragraph 8 of said amended complaint, these defendants deny that, at or immediately prior to the transfer of the assets of the Fairbanks

Banking Company, a copartnership, to the Fairbanks Banking Company, a corporation, the capital stock of the Gold Bar Lumber Company was carried on the books of said corporation in the sum of \$248,067.89, or a less sum than \$341,949.00. Deny that, at the date of said transfer, the value of said Gold Bar Lumber Company stock was a sum less than \$248,067.89, or was of a less value than the sum of \$341,949.00. Deny that said stock was transferred to and received by the said Fairbanks Banking Company, a corporation, at an arbitrarily increased or grossly fraudulent or any over-valuation of more than \$93,881.11 or any sum whatsoever, and deny that the same or all of it was done or accomplished with the full knowledge, co-operation, or consent of all the defendants Dan Ryan, C. J. Robinson, M. H. McMullen, C. E. Claypool, Robert Shepard, Hans Stark, John Flygar, J. A. Jesson, D. H. Jonas, David Yarnell, and John P. Anderson, or of the defendants R. C. Wood, James W. Hill, B. R. Dusenbury, and John L. McGinn; and deny that, at said time, the said R. C. Wood was the cashier of said Fairbanks Banking Company, a corporation, or that he was within the District of Alaska. Deny that the business of the Gold Bar Lumber Company was then, or ever since has been, or still is, of an extremely hazardous or speculative nature. Deny that the capital stock of said Gold Bar Lumber Company, a corporation, was not delivered to said Fairbanks Banking Company.

## VII.

Answering paragraph 9 of said amended com-



plaint, these defendants deny that the defendants R. C. Wood and John L. McGinn were then officers or directors of said corporation. Deny that, of the notes so sold or transferred to said corporation, a large amount was then past due, worthless, or uncollectible, and deny that the amount of past due, worthless, and uncollectible paper was a sum in excess of \$53,000.00 or any sum; and deny that the same [83] are still unpaid or without substantial value; and deny that the list of notes, with the amounts thereof, as set forth in paragraph 9 of said amended complaint, were worthless or uncollectible, or that the same are worthless and uncollectible; deny that it was then and there well known to said defendants, directors, or officers aforesaid, or by each of them, or by the exercise of ordinary or of great care might have been so known to them or any or each of them, that the said notes listed in said paragraph 9 of said amended complaint, were, at the time that the same were accepted or transferred to said Fairbanks Banking Company, a corporation, past due or worthless or without substantial value.

### VIII.

Answering paragraph 10 of said amended complaint, these defendants deny that, for the 1502 shares of the capital stock of said corporation, issued on March 14, 1908, the same were all paid for by promissory notes, but allege that some were paid for in cash. Deny that a large amount of said notes were, or still are, worthless or uncollectible, or that the same have never been paid, and deny that the amount of said worthless and uncollectible notes is



of the face value of \$22,982.33 or any other sum.

### IX.

Answering paragraph 11 of said amended complaint, these defendants deny that there was an issued capital stock of \$202,200, or a greater sum than \$189,200. Deny that, with no other assets than those of the Fairbanks Banking Company, a copartnership as mentioned and set forth in "Exhibit 1," added to said stock subscription notes of the face value of \$150,200, the Fairbanks Banking Company, a corporation, on March 16, 1908, commenced business as a bank. Deny that the amounts and the assets set forth in said paragraph 11 constituted all of the assets of said Fairbanks Banking Company, a corporation. Deny that the sum of \$200,000 belonging to E. T. Barnette was an "alleged" special deposit, and deny that the same was not in fact deposited by the said E. T. Barnette. [84]

### X.

Answering paragraph 12 of said amended complaint, these defendants deny that, on March 16, 1908, when said Fairbanks Banking Company, a corporation, commenced business, that said corporation was actually insolvent in this, or otherwise, that its assets were then insufficient in value to pay its debts; but allege that in truth and in fact the assets of said corporation at said time were more than ample to pay all of its debts and obligations. Deny that knowledge of the actual insolvency of said bank was then known to the directors or officers of said institution hereinbefore mentioned, or by the exercise of great, ordinary, or other care, might have been

known. Admit that said bank on the 16th day of March, 1908, was upon a "scrip" basis, but allege that all the other banks in the Fairbanks Recording District and the major portion of the banks throughout the United States, was upon the same "scrip" basis owing to the financial "flurry" in existence at that time.

## XI.

Answering paragraph 13 of said amended complaint, these defendants deny that said bank, or the defendants mentioned in the amended complaint, or the officers, directors, and employees of said bank, at all times or any times falsely or wrongfully, or otherwise, represented or held out to the public generally, or otherwise, that said Fairbanks Banking Company, a corporation, had paid-up capital stock of \$300,000.00.

## XII.

Answering paragraph 14 of said amended complaint, these defendants deny that John L. McGinn was a director of said bank from and including the 13th day of September, 1909, to the 12th day of May, 1910; deny that John L. McGinn and R. C. Wood, or either of them, continued to act as directors of said bank subsequent to the 1st day of May, 1910.

## XIII.

Answering paragraph 17 of said amended complaint, these defendants deny that the defendant L. N. Jesson acted as an executive [85] officer of said corporation, or as a member of the executive committee thereof, until the 12th day of September, 1910, or any other time.

## XIV.

Answering paragraph 18 of said amended complaint, these defendants admit that at the meeting of the board of directors, held March 12th, 1908, R. C. Wood was elected cashier of said bank, but deny that the said R. C. Wood thereupon accepted said office or entered upon his duties thereof, or that he accepted said office or entered upon his duties as cashier prior to the 17th day of April, 1908. Admit that he continued to perform the duties of cashier of said Fairbanks Banking Company, a corporation, until June 29th, 1908, but allege in this connection that upon the 12th day of May, 1908, said R. C. Wood tendered his resignation to said corporation as cashier and requested to be relieved of his duties, but at the request of the board of directors continued to act as cashier until June 29th, 1908.

## XIV.

Answering paragraph 19 of said amended complaint, these defendants deny that, shortly after the said Fairbanks Banking Company, a corporation, commenced business, said corporation wrongfully or unlawfully began to reduce its issued capital stock by accepting the surrender thereof, or giving in return therefor either cash or the stock subscription notes given for said stock; and deny that a list of said stock so surrendered, together with the date of surrender and the number of shares surrendered and the names of the parties surrendering or the amount of cash or subscription notes returned thereof, is as is set forth in the list set out in said paragraph 19 of the amended complaint. Deny that the defendant R. C. Wood

ever surrendered any issued capital stock of said Fairbanks Banking Company, a corporation, and deny that he was ever the owner of the same. Deny that the defendant John L. McGinn ever sold or surrendered, or that the Fairbanks Banking Company, a corporation, ever received, any stock of the said John L. McGinn, or that said corporation ever paid the said John L. McGinn any money therefor. [86]

Deny that, during all the times from and including said 20 June, 1908, to and including said 25 October, 1910, the liabilities of said corporation to its general creditors greatly exceeded its assets, and deny that, by accepting the surrender of its capital stock and returning, or returning, therefor cash and subscription, or subscription notes, as in said paragraph XIX alleged, the assets of said corporation to which said creditors could look for payment of their claims were further decreased, or that the same were, in the manner or amounts aforesaid, withdrawn or divided among the said stockholders of said corporation. Deny that the surrender of said stock or the return of cash or notes, as in said paragraph set forth, were made to or by said corporation with the full knowledge, consent or approval of the defendants or each of them who constituted its board of directors or officers, on the dates set forth in said paragraph XIX, or that, by the exercise of ordinary, or great, care the same could have been known to them or each of them. Deny that any stock surrendered to said corporation, after the 15th day of March, 1909, was done with the knowledge, consent, or approval of the board of directors of said bank,



or with the knowledge, consent, or approval of the defendants.

Answering paragraph XX of said amended complaint, these defendants deny that there were issued 2020 shares of the capital stock of said corporation on the 4th day of March, 1908, or a greater amount than 1892 shares, and as to whether, by reason of the surrender or cancellation of shares, as mentioned in said paragraph XIX of the said complaint, the total issued capital stock never exceeded 2156 shares, or after the 9th day of November, 1909, never exceeded 1726 shares, these defendants have no knowledge or information sufficient to form a belief, and therefore deny the same. [87]

Answering paragraph XXI of said amended complaint, the defendants deny each and every allegation, matter, and thing contained therein, save and except as hereinafter set forth in the separate, further, and affirmative defense of these defendants.

Answering paragraph XXIII of said amended complaint, these defendants deny that John L. McGinn, on 13 September, 1909, was a director of said Fairbanks Banking Company, a corporation. Deny that said L. N. Jesson was a member of the executive committee of said corporation. Deny that, on 13 September, 1909, the said Washington-Alaska Bank of Washington had in its assets the sum of \$70,040.10 of loans past due, and deny that the same were at said time, or still are, without substantial value, and deny that the said Washington-Alaska Bank of Washington was carrying its real estate and fixtures at \$10,000.00 or any sum in excess of their real value.



Deny that said Fairbanks Banking Company, a corporation, with the *excess* knowledge, consent or approval of the defendants in said paragraph XXIII mentioned, its then directors or officers in said paragraph mentioned, on 13 September, 1909, or at any other time, paid to the stockholders of the Washington-Alaska Bank of Washington, for said capital stock thereof, a premium or bonus or more than \$100,000.00 or any other sum over and above the then paid in capital stock of [88] the Washington-Alaska Bank of Washington, or over and above the actual value thereof. Deny that thereby said defendants wrongfully or fraudulently lost or dissipated more than \$100,000.00, or any sum of the funds or assets of said Fairbanks Banking Company, a corporation, or greatly, or at all, aggravated or increased its already insolvent condition, and deny that said Fairbanks Banking Company at said time was insolvent. Deny that said Fairbanks Banking Company selected and appointed the defendant R. C. Wood manager of the three banks, viz.: the Fairbanks Banking Company, the Washington-Alaska Bank, or the First National Bank, and deny that the said three banks continued thereafter until on or about 12 May, 1910, to be managed or operated by the defendant R. C. Wood as manager. Deny that the same were but ostensibly managed and operated as separate and distinct and unassociated banks, and in this connection these defendants allege that the said R. C. Wood was appointed and selected by the said Fairbanks Banking Company as an advisory manager of said three banks, with authority only to

confer and consult with the officers of said Fairbanks Banking Company and said Washington-Alaska Bank.

Answering paragraph XXV of said amended complaint, these defendants deny that, on 10 April, 1910, the Fairbanks Banking Company, a corporation, was controlled or was in the control or management of the Washington-Alaska Bank, and allege that, at said time and prior and subsequent thereto, the affairs of the Washington-Alaska Bank were managed by its own board of directors, and that said Fairbanks Banking Company had no voice in the management of the affairs of said bank other than that of a stockholder. Deny that said Fairbanks Banking Company, a corporation, caused said Washington-Alaska Bank of Washington to declare or pay to the Fairbanks Banking Company, a corporation, a dividend of thirty-three and one-third per centum of the capital stock of said Washington-Alaska Bank of Washington, amounting to the sum of \$50,000.00, and in this connection these defendants allege that the directors of said Washington-Alaska [89] Bank did, on said date, declare a dividend of the sum of \$50,000.00 out of its surplus and undivided profits. Deny that, at the time said dividend was declared and for a period of seven months prior thereto, the management of the Fairbanks Banking Company, a corporation, the Washington-Alaska Bank of Washington, and the First National Bank, had been under the general management of the defendant R. C. Wood, otherwise than as has been set forth in the preceding paragraph. Admit that the

amount of the surplus and undivided profits of the Washington-Alaska Bank had decreased from the sum of \$66,839.16 to \$57,169.76, but deny that said decrease was a net loss of \$9,669.40, or any amount, for seven months' operation, and defendants allege that said decrease was the result of the charging off of some bad loans. Admit that, on said day that said dividend was declared, the Washington-Alaska Bank of Washington had a capital stock of \$150,000.00 and a surplus of \$57,169.76, but deny any information or knowledge sufficient to form a belief as to whether, on said date, it had among its assets loans and discounts past due without substantial value, or which had not yet been collected or can not be collected, amounting to the sum of \$76,005.35, or an other amount. Admit that it had invested in a certificate of deposit of the Fairbanks Banking Company the sum of \$125,000.00, but deny that said Fairbanks Banking Company was insolvent and allege that said certificate was paid in full.

Answering paragraph XXVI of said amended complaint, these defendants deny that, on 12 April, 1910, said Fairbanks Banking Company, a corporation, acting by and through its then board of directors, by a resolution entered on the minutes of said Fairbanks Banking Company, a corporation, wrongfully and fraudulently declared and ordered to be paid on its then outstanding capital stock of 168,600 a dividend of twenty per centum, amounting to \$33,720.00.

Answering paragraph XXVII of said amended complaint, these defendants deny that on 12 April,

1910, or at or before the time when said dividend mentioned in the preceding paragraph was ordered [90] to be paid, the said Fairbanks Banking Company, a corporation, was, or long prior thereto had been, in a grossly insolvent or failing condition. Deny that said Fairbanks Banking Company, a corporation, had, on said 12 April, 1910, no earnings, surplus, or undivided profits on hand, out of which said dividend could legally be paid, and deny that, at or prior to said date, said Fairbanks Banking Company had neither capital stock nor surplus. Deny that the Washington-Alaska Bank of Washington was a subsidiary corporation to the Fairbanks Banking Company, a corporation, and deny that the asset carried by the Fairbanks Banking Company on its books of \$75,000.00 as a premium on the capital of said Washington-Alaska Bank, had no existence whatever and that the same was purely imaginary or of no value. Deny that the said Fairbanks Banking Company, a corporation, on said 12 April, 1910, carried as an asset, at their face value, loans or discounts which were past due, or were worthless, or that have not yet been paid, or that can not be collected, in a sum amounting to \$118,250.47, or any other sum. Deny that the capital stock of the Gold Bar Lumber Company originally had been, or still was on said 12 April, 1910, fraudulently overvalued by a sum in excess of \$93,881.11 or any sum. Deny that said dividend amounting to the sum of \$33,720.00 was wrongfully, unlawfully, or fraudulently declared or paid by said Fairbanks Banking Company, a corporation, with the express knowledge, consent, or



approval of the defendants D. H. Jonas, J. A. Jesson, John Flygar, C. J. Robinson, David Yarnell, Robert Shepard, R. Brumbaugh, John L. McGinn, R. C. Wood, J. A. Jackson, or James W. Hill, or of the defendant L. N. Jesson (and deny that said L. N. Jesson was a member of the executive committee of said corporation), or of R. C. Wood, (and deny that said R. C. Wood was its general manager), out of, by, or with the funds and moneys of the depositors of said Fairbanks Banking Company, a corporation, and not by, out of, or with the surplus earnings and undivided profits of said Fairbanks Banking Company, a corporation, and as to whether, on said 12 April, 1910, said Fairbanks Banking Company, a corporation, owed to depositors the [91] sum of \$960,689.79, these defendants have no knowledge or information sufficient to form a belief and therefore deny the same.

Answering paragraph XXVIII of said amended complaint, these defendants deny that, shortly prior to 12 May, 1910, said E. T. Barnette, as president of the Fairbanks Banking Company, a corporation, and of the Washington-Alaska Bank of Washington, by and with the knowledge and consent of the then directors and officers of said Fairbanks Banking Company, a corporation, wrongfully sold or transferred to the defendants R. C. Wood, and John L. McGinn, the entire capital stock of said First National Bank, for the sum of \$125,000.00. Admit that said sale and said transfer of said stock of said First National Bank to the defendants R. C. Wood and John L. McGinn was claimed to have been made



under and pursuant to an option, claimed to have been given to the defendant Wood at the time said stock was purchased by said Fairbanks Banking Company, a corporation, and the said Washington-Alaska Bank of Washington, but deny that said option was entered into without consideration and was void and allege that said option did in fact exist. Deny that the capital stock of said First National Bank was carried by the said Fairbanks Banking Company, a corporation, for an entire year, without any interest or profit paid or received by said Fairbanks Banking Company, a corporation, and solely, or solely, for the use, benefit, and profit of said defendants R. C. Wood and John L. McGinn, and deny that the same was done, suffered, or permitted by and with the knowledge, consent, or approval of all the then directors and officers of the said Fairbanks Banking Company, a corporation, and deny that, by said act, the said Fairbanks Banking Company, a corporation, was damaged in a large sum to wit, in a sum in excess of \$25,000.00 or any sum.

Answering paragraph XXIX of said amended complaint, these defendants deny that, on 12 May, 1910, and long prior thereto, the said R. C. Wood and John L. McGinn had full or complete knowledge [92] or means of knowledge, of the grossly insolvent and failing condition of said Fairbanks Banking Company, a corporation, and deny that, at said time, said Fairbanks Banking Company, a corporation, was in a grossly insolvent or failing condition. Admit that they knew that said E. T. Barnette had not, at said time, withdrawn his deposit

of \$200,000.00. Deny that said R. C. Wood and John L. McGinn then or there knew that said E. T. Barnette was likewise aware of the said insolvent or failing condition of said Fairbanks Banking Company, a corporation, and deny that said Fairbanks Banking Company, a corporation, was insolvent or in a failing condition. Deny that said Wood and McGinn knew that said Barnette could or would shortly withdraw in cash the whole of said alleged special deposit of two hundred thousand dollars. As to whether said E. T. Barnette did actually withdraw, within sixty days after 12 May, 1910, said sum of two hundred thousand dollars, these defendants have no knowledge or information sufficient to form a belief and therefore deny the same. As to whether said E. T. Barnette, by withdrawing said sum of two hundred thousand dollars, thereby preferred himself as a creditor of said Fairbanks Banking Company, a corporation, these defendants allege that they are without sufficient legal knowledge or information sufficient to form a belief and therefore deny the same, and as to whether the withdrawal of said money and all of the things alleged in said paragraph XXIX of plaintiff's amended complaint were done with the knowledge, consent, and approval of the then board of directors and officers of said Fairbanks Banking Company, a corporation, these defendants have no knowledge or information sufficient to form a belief and therefore deny the same.

### XV.

Answering the allegations of paragraph XXX of said amended complaint, this answering defendant

admits the consolidation of the Fairbanks Banking Company and the Washington-Alaska Bank, in the manner therein set forth, but alleges that they have no knowledge or information as to the amount due to the depositors at the time of said consolidation, as therein alleged, and, by reason of their lack [93] of information and belief in the matter, denies that there was owing to the said depositors the sum of \$947,800.29.

Further answering the allegations of said paragraph XXX these answering defendants deny that said Washington-Alaska Bank of Washington had no undivided profits on hand at the time of said consolidation, and avers, that, as they are informed and believe, and therefore so allege on such information and belief, the said Washington-Alaska Bank of Washington had on hand undivided profits in the sum of \$4,658.92; that answering defendants are informed and believes and basing their denial on such information and belief, denies that the capital stock of the said Washington-Alaska Bank of Washington was seriously impaired, or impaired in any way, as alleged in said paragraph; denies that said bank had on hand at said time loans and discounts in the sum of \$100,704.98, which were bad, worthless, and uncollectible, and have not been paid, or that were bad, or worthless, or uncollectible; alleges that answering defendant has no information or belief as to whether or not the loans referred to in said paragraph were carried on the books of the Washington-Alaska Bank of Washington at their face value or at their present worth, and defendant alleges that he has no informa-

tion or knowledge as to whether or not said notes have been paid, but is informed and believes that a portion of said notes has since been paid, and basing his denial on such information and belief and lack of information, denies that the notes of the face value of \$100,707.98, carried by the Washington-Alaska Bank of Washington on its books on the first day of October, 1910, have not been paid; denies that, on the first day of October, 1910, or at any other time alleged in plaintiff's amended complaint, the directors of the Fairbanks Banking Company knew that notes, of the value of \$100,704.98, carried on the books of the Washington-Alaska Bank of Washington were worthless, or bad, or uncollectible, or that any material portion thereof was so worthless, or bad, or uncollectible; admits that after said consolidation, said Fairbanks Banking Company, a corporation, continued to carry on and conduct a banking business at the [94] town of Fairbanks as formerly, but under the name of the Washington-Alaska Bank, and denies that, at all times after the first day of October, 1910, or at any time after said first day of October, 1910, said directors, fraudulently, and without right, or fraudulently, or without right, carried on the books of the said Washington-Alaska Bank, as a book asset, the item "Premium Washington-Alaska Bank stock, \$75,000.00"; admits that said item was carried on the books, as therein set forth, but deny that said asset had no existence whatsoever, or that the same was purely imaginary, false, and fraudulent, or imaginary, or false, or fraudulent.



## XVI.

Answering the allegations of paragraph XXXI of said amended complaint, these answering defendants admit that, subsequent to the first day of October, 1910, and up to and including the fourth day of January, 1911, the Washington-Alaska Bank, formerly the Fairbanks Banking Company, continued actively in business as a bank and received deposits from the public generally, but denies that said bank was, during said time, insolvent and in a failing condition or insolvent, or in a failing condition, as alleged in said paragraph; admits the other matters and things in said paragraph contained. [95]

## XVII.

Answering the allegations of paragraph XXXII, this answering defendant avers that he has no knowledge or information as to the exact amount of the liabilities of said Washington-Alaska Bank on the 4th of January, 1911, as alleged in said paragraph, but denies that the assets of said Washington-Alaska Bank were, by reason of wrongful, fraudulent, and negligent acts of this answering defendant, or of the board of directors of which this defendant was a member, rendered insufficient to pay said liabilities in full, and denies that the assets of said bank were impaired, injured, or rendered insufficient to pay the liabilities of said bank, by reason of any act or thing done by this answering defendant, or his codirectors during the time this defendant was a member of said board of directors.

## XVIII.

Answering the allegations of paragraph XXXIII



of plaintiff's said amended complaint, this answering defendant denies that the receivers have reduced to cash as far as possible the assets of the Washington-Alaska Bank; admits that there have been paid on the acknowledged and proven liabilities of the bank, dividends aggregating fifty per centum, and answering defendant alleges that he has no knowledge or information as to whether or not \$12,627.70 of said dividends have either not been called for or have been withheld by order of Court; answering defendant is informed and believes, and therefore so alleges, that a portion of the claim of the Dexter Horton National Bank of Seattle has been paid, and basing his denial on such information and belief, denies that there is due or owing to said Dexter Horton National Bank of Seattle the sum of \$128,899.37, but alleges that he has no knowledge of how much is due to said bank; answering defendant further alleges that [96] he has no information as to whether creditors to the amount of \$4,132.62 have failed to prove their claims or have not demanded dividends.

### XIX.

Answering the allegations of paragraph XXXIV, this answering defendant admits that, on the fourth day of January, 1911, there was due and owing to the Dexter Horton National Bank of Seattle, a large sum of money, the exact amount of which is to this answering defendant unknown, and admits the remainder of said paragraph.

### XX

Answering the allegations of paragraph XXXV of

plaintiff's amended complaint, this answering defendant denies that the stock of the Gold Bar Lumber Company belonging to the Washington-Alaska Bank, a corporation, is subject to any claims of the Dexter Horton National Bank of Seattle, other than its claim as a general creditor against the same, and alleges that he has no information or knowledge as to whether or not F. G. Noyes as receiver of the Washington-Alaska Bank, has made efforts to sell said stock, or that he has been unable to obtain for said stock an offer in excess of the claim of said Dexter Horton National Bank, or any other sum whatsoever; so neither admits nor denies said allegation; answering defendant is informed and believes, and basing his denial on such information and belief, denies that the stock of the Gold Bar Lumber Company has no value in excess of the claim of the Dexter Horton National Bank of Seattle, and denies that any valuation in excess of said sum is wholly uncertain and speculative.

## XXI.

Answering the allegations of paragraph XXXVI of plaintiff's amended complaint, this answering defendant alleges that he has no exact information or knowledge as to the character and amount of the assets of said bank now in the hands of the receiver, other than the Gold Bar Lumber Company stock, as alleged in said paragraph, sufficient to form a belief, and expressly denies that there are not now in the hands of the receiver, and were not in said receiver's hands at the time of the filing of said complaint, other assets [97] than the assets set forth in said para-

graph, available for the purpose of paying the creditors of said bank.

Answering the allegation that bills, notes, and overdrafts of the face value of \$266,020.31 are not of that value, this answering defendant alleges that he has no information or knowledge sufficient to form a belief as to said matters, and basing his denial on such lack of information and belief, denies the same. Denies that only \$80,000.00 thereof is owing from solvent debtors and can be collected, and denies that the balance thereof is bad, worthless, and uncollectible, or bad, or worthless, or uncollectible. Answering defendant alleges that he has no knowledge as to the actual cash or market value of the real estate, furniture, and fixtures, sufficient to form a belief in order to enable him to admit or deny the same.

## XXII.

Answering the allegation of paragraph XXXVII of plaintiff's said amended complaint, defendant denies the matters and things therein set forth.

## XXIII.

Answering the allegations of paragraph XXXVIII of said amended complaint, this answering defendant denies each and every matter and thing therein contained.

## XXIV.

Answering the allegations of paragraph XXXIX of plaintiff's said amended complaint, this answering defendant denies each and every matter and thing therein contained. [98]

And defendants, for a further, separate, and affirmative defense, allege that, on 12 December, 1907,

owing to the unusual and continuous withdrawal of funds by the depositors of the Fairbanks Banking Company, a copartnership, brought about by a feeling of unrest in financial circles all over the United States as well as in the Tanana Valley, the said Fairbanks Banking Company, a copartnership, was compelled to close its doors and suspend business. A meeting of the depositors and creditors of said bank was immediately called and, on 14 December, 1907, at the United States courthouse in Fairbanks, Alaska, a large meeting of the depositors and creditors of said bank was held, at which meeting a committee consisting in W. G. Cassels, C. E. Claypool, Day Ryan, George Preston, and D. H. Jonas, was elected, by open ballot of the depositors and creditors present, to investigate and examine into the affairs of the said Fairbanks Banking Company and to report back to the meeting of the depositors and creditors to be held on 16 December, 1907. That said committee so selected consisted in men of high standing in this community for honesty, integrity, and good business judgment. That said committee, acting according to instructions, and after having obtained expert accountants, proceeded to examine carefully into the affairs of said bank, and, after examining all the books, vouchers, documents, and other evidences of the affairs of said bank, and after separately scrutinizing all the notes, mortgages, certificates, and other resources of said bank, made a report to the said meeting of depositors on 16 December, 1907, of the resources and liabilities of said bank, and in said report declared and stated that the resources of said



bank exceeded its liabilities in the sum of \$288,579.73. That said committee reported that the net value of the Gold Bar Lumber Company stock,—a corporation of the State of Washington,— [99] held by the said Fairbanks Banking Company, was the sum of \$341,949.00. That, on examining the loans, the same were divided into three classes; class No. 1 being the class which said committee considered as gilt-edged; class No. 2, being the class which said committee considered as perfectly good; and class No. 3 being the class that the committee considered might be doubtful, and which said last or doubtful class amounted to the sum of \$66,235.44, and which said last or doubtful class was eliminated and not considered as arriving at the resources of said Fairbanks Banking Company. That the committee, hereinbefore mentioned, was known as the board of trustees of the Fairbanks Banking Company, a copartnership, and continued to act in that capacity until the said Fairbanks Banking Company, a copartnership, was taken over by the corporation.

That, in the fore part of January, 1908, a large number of business, professional, and mining men, representative men of the Fairbanks Precinct, met in the town of Fairbanks, Alaska, for the purpose of organizing a corporation to purchase, take over, and absorb the business of the Fairbanks Banking Company, a copartnership, and at said meeting negotiations were begun by said mining, professional, and business men with the Fairbanks Banking Company, a copartnership, for the purchase of the same. That said meeting was a preliminary one, and that



thereat it was agreed that a corporation should be organized under the laws of the State of Nevada, for the purpose of taking over and absorbing and purchasing said Fairbanks Banking Company, a copartnership. That the name of said corporation should be the Fairbanks Banking Company. That the amount of the capital stock should be \$300,000.00, divided into 3000 shares of the par value of one hundred dollars each. That the property of said bank should be turned over and that, in the event a surplus of assets over liabilities was found to exist, after deducting [100] the sum of two hundred thousand dollars, which was the personal property of said E. T. Barnette, stock should be issued to E. T. Barnette, for one-half of said surplus, and that either stock or money should be paid to R. C. Wood and James W. Hill, at their option, for the other half of said surplus. That, at said time, it was contemplated that, owing to the great distance between Fairbanks, Alaska, and the State of Nevada, and the uncertainty and slowness of travel, the organization of the said corporation could not be perfected before 15 February, 1908, and it was agreed among said proposed incorporators that the issue of stock for said corporation should be as of date 15 February, 1908, and that the amount of stock subscribed by any person, other than that subscribed for property, should on said 15 February, 1908, be paid for either in cash, or in the event that, at said time, said subscriber was not able to make any cash payment on said stock, each subscriber should give his promissory notes for the individual amount of stock sub-

scribed by him, one due on or before 1 June, 1908, for twenty-five per centum, of the amount of the capital stock subscribed by him, and the other for seventy-five per centum thereof, which should become due and payable on or before the first day of July, 1908, said notes to bear interest at the rate of one per centum a month from the date of the issuance of the stock until paid. Further it was agreed that, if at the time the stock should be issued, any of the subscribers should pay therefor an amount equal to twenty-five per centum thereof, then such subscriber was to execute his note for the remaining seventy-five per centum due on or before the first day of July, 1908. It was also agreed that, if said payment so made should not equal twenty-five per centum of the par value thereof, then such subscriber agreed to execute another note for an amount equal to twenty-five per centum thereof, which should become due and payable on [101] or before the first day of June, 1908, and a note for the remaining seventy-five per cent so hereinbefore set forth.

And for the purpose of carrying out the object of the hereinabove-mentioned meeting a committee consisting in J. A. Jesson, C. E. Claypool, and D. H. Jonas, was appointed to go into the details of the reorganization of the Fairbanks Banking Company and of the taking over of the business of said institution by said proposed new corporation. That said committee met on 5 January, 1908, and after investigating the affairs of the bank made the following report to be presented for the consideration of the proposed new incorporators:

(a) That the issued stock for the proposed new corporation be as of date February 15, 1908; that notes be taken for all deferred payments; that the same bear interest at the rate of one per cent per month from February 15, 1908, until paid; that twenty-five per centum of the unpaid for stock be due and payable on or before June 1st, 1908, and that the balance be due and payable on or before July 1st, 1908.

(b) That Captain E. T. Barnette and James W. Hill, with such associates as they may require, prepare a subscription list.

(c) That the amounts subscribed by any person be left to that person, and in case of over-subscription should be reduced proportionately.

(d) That the notes, properties, and securities of the Fairbanks Banking Company, the old institution, examined by its present acting board of trustees and on which a valuation of \$288,000.00 in excess of its total liabilities was placed, be accepted.

(e) That all notes, properties, and securities which said board of trustees placed in the No. 3 or doubtful class remain the property of the old institution. [102]

(f) That all interest on existing loans as of December 19, 1907, be computed to February 15, 1908, and that the amount of such accrued interest be placed to the credit of the old institution on the books of the new corporation, and that the same be payable on or before December 31, 1908.

(g) That should James W. Hill and R. C. Wood not take the full forty-four thousand dollars in stock

in the new corporation, the balance of the amount not so taken to be paid to them not later than July 1st, 1908.

(h) That the proposition of Captain E. T. Barnette to leave on deposit with the new corporation the sum of two hundred thousand dollars without interest for one year be accepted, and that it be the understanding that such deposits will secure said new corporation against any adverse decision of the Court in the Caustens vs. Barnette suit in so far as such decision may decrease the value of the Gold Bar Lumber Company property as accepted by the present board of trustees.

(i) That the officers of the new corporation be a president, vice-president, second vice-president, cashier, assistant cashier, treasurer, and secretary.

(j) That the number of the board of directors be twelve, four to be elected for six months, four for twelve months, and four for eighteen months or until their respective successors are duly elected and qualified.

(k) That dividends be declared semi-annually on June 30 and December 31.

Which said report was, on 6 January, 1908, submitted to an adjourned meeting of the professional, mining, and business men—the proposed incorporators—and at said meeting the said report was read and passed on section by section as read, and on motion duly made and carried was adopted and ordered kept as a part of the records of said meeting. That at said meeting [103] a subscription list, a copy of which is set forth in paragraph III



of said amended complaint was presented and signed by the said proposed incorporators, setting forth the amounts for which each respectively subscribed. At said meeting it was also agreed, on behalf of the Fairbanks Banking Company, represented by E. T. Barnette and James W. Hill, that said Fairbanks Banking Company, a copartnership, would turn over to said corporation the property of said Fairbanks Banking Company, a copartnership, on the terms specified in said report, and said proposed incorporators, in behalf of said proposed corporation in consideration thereof, agreed to assume the liabilities of the Fairbanks Banking Company, a copartnership.

That said Fairbanks Banking Company, a corporation, became a corporation on the 21st day of January, 1908. That, on the 8th day of February, 1908, a meeting of the subscribers of the capital stock of the Fairbanks Banking Company was held, for the purpose, among others, of obtaining the notes of the subscribers for the stock subscribed by them, and at said meeting said stock notes were subscribed. That at said time the articles of incorporation of said Fairbanks Banking Company had not yet been received from the State of Nevada, and for the purpose of expediency it was deemed advisable to elect a board of directors, and twelve directors were elected at said meeting, and it was agreed that said board of directors should act as such until the arrival of the articles of incorporation, when a formal meeting would be held and proper by-laws be adopted.

That said articles of incorporation did not reach



Fairbanks until some time in the month of March, 1908, and immediately thereafter a meeting of the stockholders of the Fairbanks Banking Company was called, and at said meeting said stockholders, among other things, adopted by-laws and elected a board of directors, and also passed a resolution to the effect "that the [104] matter of taking over the property of the Fairbanks Banking Company, a copartnership, consisting of E. T. Barnette, James W. Hill, and R. C. Wood, be left to the board of directors." That, immediately after the adjournment of said stockholders' meeting, the board of directors met and organized by the election of a president, vice-president, cashier, assistant cashier, secretary, and treasurer, and at said meeting it was moved and duly seconded that "the board of directors ratify the arrangement as to the taking over of the assets, property, business, and liabilities of E. T. Barnette, James W. Hill, and R. C. Wood, upon the terms and conditions as are set forth in the minutes of the meeting of the subscribers held January 5th, 1908, and which is as follows: That the notes, properties, and securities of the Fairbanks Banking Company, the old institution, examined by its present acting board of trustees, and on which a valuation of \$288,000.00 in excess of its total liabilities was placed, be accepted, and that all notes, properties, and securities which said board of trustees placed in the No. 3 or doubtful class remain the property of the old institution, and that all interest on existing loans as December 12, 1907, be computed to February 15, 1908, and that the amount of such ac-

crued interest be placed to the credit of the old institution on the books of the new corporation, and that the same be payable on or before December 31, 1908; and should James W. Hill and R. C. Wood not take the full forty-four thousand dollars in stock in the new corporation, the balance of the amount not so taken be paid to them not later than July 1st, 1908, and that the proposition of Captain E. T. Barnette, to leave on deposit with the new corporation the sum of two hundred thousand dollars without interest for one year, be accepted, and that it be the understanding that such deposit will secure said new corporation against any adverse decision of the Court in the *Saustens vs. Barnette* suit in so far as such decision may [105] decrease the value of the Gold Bar Lumber Company property as accepted by the present board of trustees; and that the executive committee be empowered to see that all papers and transfers be made properly by the officers of the old Fairbanks Banking Company and such transaction legally carried out." Which motion being duly put and seconded the same was unanimously carried.

That, at the meeting held by the proposed stockholders of said corporation on 6 January, 1908, it was believed by all present that the organization of the Fairbanks Banking Company, a corporation, could be perfected by 15 February, 1908, and that, by said date, said corporation could take over the affairs of the copartnership. It was then agreed that, as the expenses of operating the bank from that date up to the time of the taking over of the affairs

of the copartnership by the corporation, would fall on the copartnership, that by reason thereof said copartnership should be entitled to all interest on existing loans until the affairs of the copartnership were turned over to the corporation, and for that reason said copartnership was declared to be entitled to interest on existing loans up to 15 February, 1908. At the meeting of the board of directors, held on 12 March, 1908, the matter of allowing the copartnership accrued interest up to 16 March, 1908, when it was contemplated that the corporation would take over the business of the copartnership, was taken up and discussed, and it was moved and seconded that the following paragraph contained in the minutes of 5 January, 1908, of the proposed incorporators, to wit: "That all interest on existing loans as December 12, 1907, be computed to February 15, 1908, and that the amount of such accrued interest be placed to the credit of the old institution on the books of the corporation and the same be payable on or before December 31, 1908," be changed so that [106] the words "February 15" be made to read "March 15," which said motion was duly carried.

That, during all the negotiations hereinbefore mentioned, the defendant R. C. Wood was not in Alaska, and was either in the States of California or the State of Washington, and he had no detailed knowledge or information as to what was being done by the copartnership or the terms of the sale to the corporation. That said Wood's name was signed to the original subscription list without his knowledge or consent, and with the understanding of all the

subscribers that it was optional with the said R. C. Wood, on his return to Fairbanks, Alaska, to elect either to take stock in the new corporation or to receive money from the amount of stock to which he was entitled in lieu thereof.

That, in accordance with the instructions of the board of directors, the executive committee of said corporation proceeded to have the necessary papers and transfers made out, conveying the property of the copartnership to the corporation on the terms stated in the resolution of 5 January, 1908, and requested the then attorneys for the bank, McGinn & Sullivan, to prepare the necessary papers for that purpose. That, in compliance with said request, the said attorneys undertook to draw up an agreement, stating the true terms and conditions of the sale and transfer, which is the agreement attached to plaintiff's said amended complaint, and marked "Exhibit 1." That said agreement, through the mutual mistake of the copartnership and the corporation and without the fault of either, failed to set forth truly all the terms and conditions of the agreement between the said Fairbanks Banking Company, a copartnership, and the corporation, in this, that said agreement failed to reserve to the said copartnership the accrued interest on all loans up to 15 March, 1908, and further in that it failed to embody the option given to said James W. Hill and R. C. Wood, either to take [107] stock for their portion of the surplus property of the copartnership or to take money, and that in the event of their election to take money the amount should be paid not later than July



1, 1908. That, with said exception, said agreement attached to plaintiff's amended complaint and marked as "Exhibit 1" fully sets forth the terms and conditions agreed on and entered into between the Fairbanks Banking Company, a copartnership, and the corporation.

That, in accordance with the true agreement had between the Fairbanks Banking Company, a copartnership, and the corporation, as set forth in a preceding paragraph thereof, the Fairbanks Banking Company issued to E. T. Barnette 260 shares of the capital stock of said corporation, and to James W. Hill 130 shares thereof, but no stock was ever issued to said R. C. Wood. That said R. C. Wood returned to Fairbanks, Alaska, on or about 17 April, 1908, and at once notified the Fairbanks Banking Company, a corporation, of his election to take money in lieu of his stock, and said corporation then and there agreed thereto. That, on the return of the said R. C. Wood to Fairbanks, Alaska, he signed the agreement attached to plaintiff's amended complaint and marked as "Exhibit 1," with the understanding on his part and of the Fairbanks Banking Company, a corporation, that said contract reserved to him the right to take money in lieu of stock, and it was never contemplated or understood by the said R. C. Wood or by said corporation that, by signing said agreement, he would waive any right to the election that he had already made to take money in lieu of his stock. That said Wood, on or about 17 April, 1908, entered on his duties as cashier, and continued to act in said capacity until 12 May, 1908, when he

tendered his resignation to the Fairbanks Banking Company, with the request that he be relieved of his duties at once and that said request be acted on. That, on said resignation being presented to the [108] board of directors, it was the unanimous desire of all the directors present that the said R. C. Wood continue to act as cashier until said bank should get on a cash basis, said bank at said time being on what was known as a script basis. The said Wood thereupon continued as such cashier up to and until 29 June, 1908, when his resignation was accepted. That said Fairbanks Banking Company, a corporation, in accordance with its understanding of the agreement existing between it and the said R. C. Wood, subsequently paid to him the sum of thirteen thousand dollars, being the amount of stock that he was entitled to receive, under the terms of the agreement entered into between the copartnership and the corporation. That the board of directors and the officers of said bank, in paying said money to R. C. Wood, merely carried out the terms of the agreement entered into between the subscribers of stock and the copartnership on 5 January, 1908, and which was ratified as a part of the arrangement entered into between the copartnership and the corporation at the meeting of the board of directors held on 12 March, 1908.

That there was paid to said E. T. Barnette, James W. Hill, and R. C. Wood by the Fairbanks Banking Company the sum of \$39,642.81 on account of interest accrued on loans up to and until the 15th day of March, 1908. That this amount paid by said corpo-

ration to said Barnette, Hill and Wood, was done in accordance with the terms of the agreement made and entered into between the copartnership and the proposed incorporators on 5 January, 1908, save and except that the time thereof was subsequently extended by the board of directors from 15 February, 1908, to 15 March, 1908. That said contract so entered into between the proposed incorporators the copartnership was ratified by the corporation on 12 March, 1908, and the board of directors and officers of said corporation, in paying to the said Barnette, Hill, and Wood the said sum of \$39,642.81, merely carried out the terms of the agreement entered into between the corporation [109] and said persons, but, as hereinbefore stated, said provision was inadvertently and through mistake of the parties omitted from said contract attached to plaintiff's amended complaint and marked "Exhibit 1."

The defendants, particularly answering paragraph VI of said amended complaint, allege that the acquisition and purchase by the Fairbanks Banking Company, a corporation, of the assets and business of the Fairbanks Banking Company, a copartnership, was done by the stockholders of said corporation, and that the agreement entered into between the Fairbanks Banking Company, a copartnership, and the proposed incorporators, was long prior to the election of the board of directors, and that said board of directors, in authorizing the taking over of the property of the said Fairbanks Banking Company, a copartnership, on the terms agreed, was merely carrying out the instructions of the stock-

holders and such act was merely a ratification of the arrangements entered into between the stockholders of said corporation and the Fairbanks Banking Company.

Particularly answering paragraph VIII of said amended complaint, the defendant Wood alleges that he was not present at Fairbanks, Alaska, at the time that the price of said Gold Bar Lumber Company stock was agreed on, nor did he participate in any way in the sale of the same to the corporation. The defendant McGinn alleges that, at the time that said Gold Bar Lumber Company stock was accepted by the Fairbanks Banking Company, a corporation, for the sum of \$341,949.00, he honestly and in good faith believed that said property, so accepted, was worth said amount, and has, ever since said time, believed that said property, under favorable market conditions, is worth said amount. That, at the time that he became a stockholder of said corporation, he had no personal knowledge as to the value of said Gold Bar Lumber Company stock, and relied on the statements [110] and reports made to him by people who were personally acquainted with the property and also on the report of the board of trustees made on 16 December, 1908.

The defendant Wood, answering paragraph IX of said amended complaint, alleges that he was not in Fairbanks, Alaska, nor within the Territory of Alaska, at the time the notes and loans therein mentioned were taken over by the Fairbanks Banking Company, and that he did not participate in the sale or transfer of said notes and loans from the



copartnership to the corporation in any way. That he now believes that said notes and loans set forth in said paragraph IX were then collectible and were worth the amount for which they were accepted. The defendant McGinn, answering said paragraph, alleges that when he became a stockholder of said Fairbanks Banking Company, and during the time that he was acting as attorney for said Fairbanks Banking Company, he did not go through the loans and discounts of the bank to determine the value of said loans and discounts, nor if he had done so would he have been in a position to determine what the value of the loans and discounts was, but that he depended on the report of the officers of the institution and the report that the board of trustees made as to the loans and discounts of said bank.

And defendants, for a further and separate answer and defense, allege:

That the said E. T. Barnette, who is jointly charged with these defendants as to all the wrongs complained of in plaintiff's said amended complaint on file herein, was, during the time of all the transactions mentioned in said complaint, the president of said Fairbanks Banking Company, afterwards known as the Washington-Alaska Bank, and one of its directors.

That, at the time of the suspension of said bank, the said E. T. Barnette was not within the Territory of Alaska, but shortly thereafter, and in the month of February, 1911, [111] returned to Fairbanks, Alaska, and entered into negotiations with the creditors and depositors of said bank and with the then

receivers of said bank, for the purpose of amicably adjusting all suits and causes of action that might exist against him on account of any of the matters and things set forth in the said amended complaint herein.

That, as a result of said negotiations and in full satisfaction of all the wrongs complained of in plaintiff's amended complaint, the said E. T. Barnette, on 18 March, 1911, executed an instrument in writing, in which he admitted his liability to the creditors and depositors of said bank and promised and agreed to pay all the depositors and creditors of said bank in full, not later than 18 November, 1914, together with interest on all amounts due to creditors and depositors from said 4 January, 1911, until paid.

That Isabelle Barnette is the wife of said E. T. Barnette and the said Isabelle Barnette was desirous of aiding her said husband in the payment of the creditors and depositors of said Washington-Alaska Bank, and to that end joined her said husband in the promise to pay all the depositors and creditors of the said Washington-Alaska Bank, on the terms above expressed.

That said premises were made on the distinct understanding and agreement that no litigation would be instituted against the said E. T. Barnette or others for or on account of any of the matters and things set forth in the amended complaint. That, for this purpose and to prevent any litigation and as security for the faithful performance of the promises made by the said E. T. Barnette and Isabelle Barnette, the said Isabelle Barnette and E. T. Barnette,

on 18 March, 1911, with the knowledge, consent, and approval of this Court, conveyed to the receiver of said bank, and said receiver, by order of this Court accepted, the conveyance of title to an improved plantation, containing 18,723 acres, situate in the Republic of Mexico, and certain improved and income-producing business properties and [112] lots situated in the incorporated town of Fairbanks, Territory of Alaska, and certain large interests in valuable association placer mining claims situate in the Fairbanks Precinct, Territory of Alaska, all of which properties belonged, at the time of said conveyance, to the said E. T. Barnette and Isabelle Barnette, and are worth the sum of one million dollars, a sum greatly in excess of the unpaid debts and liabilities of said bank.

That, in said deed of said property situate in the Republic of Mexico, it is expressly provided that said receivers may sell all or any part of said land at private sale, on or after 18 November, 1914, for the purpose of raising funds with which to pay the claims of the depositors and creditors of said bank then remaining unpaid, and out of the proceeds thereof said receivers are directed to pay all the claims of depositors and creditors of said bank then remaining unpaid; and in said deed said grantors further authorize and empower said receivers to collect and receive the amount of \$226,025.00, payable 18 November, 1914, in case an option given 18 November, 1909, for the purchase of forty-nine per centum thereof is exercised by this time, and to apply such sum to the payment of said debts; and said

deed to property situate in the Territory of Alaska also gives said receivers power to collect and receive all the rents royalties and profits from the property therein described and to sell said property and to apply the amounts so received in payment of said debt.

That said receiver, plaintiff herein, holds a large amount of property belonging to said bank, which is of great value and has not been converted into money, and the property so held by him and the property so conveyed to the receivers by said E. T. Barnette and Isabelle Barnette are more than sufficient to satisfy all claims, demands, and obligations of whatsoever nature now existing against said Washington-Alaska Bank of Nevada. [113]

That the then receivers of the said Washington-Alaska Bank agreed to accept, in full satisfaction of all the matters and things set forth in plaintiff's said amended complaint and sued on herein, the said promises and property of said E. T. Barnette and Isabelle Barnette, and the said E. T. Barnette and Isabelle Barnette made and executed said promises and conveyed said property in full satisfaction of all suits or causes of action then existing against him on account of any and all matters and things arising from his connection with the said Washington-Alaska Bank and in full satisfaction of all the matters and things set forth in the amended complaint herein, and the said receivers accepted and received said promises and said property in full satisfaction of all the claims and causes of action set up in said amended complaint of plaintiff herein.



And the defendants, for a further and separate answer, allege:

That, on 18 March, 1911, and for the express purpose of preventing litigation against him for and on account of the matters and things set forth in said amended complaint, and wherein it is alleged that the defendants herein are jointly liable with the said E. T. Barnette, the said E. T. Barnette and Isabelle Barnette, his wife, promised and agreed to pay to all the creditors and depositors of the said Washington-Alaska Bank not later than 18 November, 1914, all sums that should then be found to be due to them, with interest on said amounts from 4 January, 1911, until paid.

That, for the purpose of securing the faithful performance of said premises, the said E. T. Barnette and Isabelle Barnette with the consent and approval of this Court, deeded and conveyed to the said receiver a valuable improved plantation, containing 18,723 acres, situate in the Republic of Mexico, and certain improved and income-producing business properties and lots situate in the incorporated town of Fairbanks, Territory of Alaska, and certain large interests in valuable association placer mining [114] claims situate in the Fairbanks Precinct, Territory of Alaska, all of which property belonged, at the time of said conveyance, to the said E. T. Barnette and Isabelle Barnette.

That, in said deed of the properties situate in the Territory of Alaska, the receiver was given power to collect and receive all rents, royalties, and profits therefrom, and to apply the amount received from

said properties in satisfaction of the claims of the creditors and depositors of said bank. That these answering defendants are informed and believe and so alleged that the said receiver has received as rents, royalties, and profits from the said property, approximately the sum of thirty-three thousand dollars and the value of the property held by the receiver and situate in the Territory of Alaska, other than the said sum of thirty-three thousand dollars, is of the value of not less than twenty-five thousand dollars.

That the amounts of money and property already received by the said receivers from the estate of the said E. T. Barnette are more than ample to pay all the matters and things charged against these defendants in the amended complaint of the plaintiff herein and answering defendants allege that all the wrongs and things charged against these defendants in the said amended complaint have been fully satisfied and paid.

Wherefore: These answering defendants pray;

(1) That the agreement attached to plaintiff's amended complaint and marked "Exhibit 1" be reformed so as to express the true agreement of the parties, as in answering defendants' answer hereinbefore set forth.

(2) That plaintiff take nothing by this action and that the defendants recover their costs and disbursements.

(3) That these answering defendants have such other and further relief as to the Court may seem

just and equitable in the premises.

JOHN J. McGINN and

A. R. HEILIG,

Attorneys for Answering Defendants. [115]

Territory of Alaska,

Fairbanks Precinct,—ss.

John L. McGinn, being first duly sworn according to law, on his oath deposes and says:

I have read the foregoing answer, know the contents thereof, and believe the same to be true, and as to the matters and things alleged on information and belief I also believe the same to be true.

JOHN L. McGINN.

Subscribed and sworn to before me, the undersigned, on this 27th day of September, A. D. one thousand nine hundred thirteen.

[Seal]

JOHN A. CLARK.

Notary Public in and for the Territory of Alaska.

My commission expires Apr. 24, 1914.

Due service of the within separate answer and receipt of a copy thereof are hereby acknowledged this 29th day of September, 1913.

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Attorney for Plff.

[Endorsed]: No. 1756. In the United States District Court, Territory of Alaska, Fourth Division. Noyes, Plaintiff, vs. Jesson et al. Defendants. Answer.

Filed in the District Court, Territory of Alaska, 4th Div. Sep. 29, 1913. C. C. Page, Clerk. By Angus McBride, Deputy. [116]

[Title of Court and Cause.]

**Demurrer to New Matter in Separate Answer of  
Defendants Wood, Healey and McGinn.**

Comes now, the plaintiff and demurs to the new matter set up in the separate answer of the defendants R. C. Wood, J. A. Healey and John L. McGinn as follows:

1. He demurs to said new matter set up as a further separate and affirmative defense as a basis for reformation of contract for the reason that the same does not constitute a defense or counterclaim to plaintiff's complaint.

2. He demurs to the new matter set up in the last further and separate answer of these answering defendants, pleading, that the wrongs complained of against said defendants have been satisfied and paid in full by the rents, royalties and profits derived from the Barnette trust deed, for the reason that the same does not constitute a defense or counterclaim to plaintiff's complaint.

O. L. RIDER,  
Attorney for Plaintiff.

Service of copy accepted this 2 day of October,  
1913.

J. L. McGINN and  
A. R. HEILIG,  
Attorneys for Defendants Wood, Healey and McGinn.

[Endorsed]: No. 1756. F. G. Noyes, Receiver,  
Plaintiff, vs. J. A. Jesson et al. Defendants. De-



murrer to Separate Answer of Defendants Wood, Healey and McGinn.

Filed in the District Court, Territory of Alaska, 4th Div., Oct. 2, 1913. Angus McBride, Clerk. By P. R. Wagner, Deputy. [117]

[Title of Court and Cause.]

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**[Order Overruling Demurrer to Third Separate Answer and Defense in Answer of John A. Clark, etc.]**

Now, on this day, the demurrers to the separate answers of the defendants, John A. Clark, J. A. Jesson, Raymond Brumbaugh, E. R. Peoples, Jas. W. Hill, George Preston, R. C. Wood, J. A. Healey, and John L. McGinn, having previously been heard and submitted to the Court for its decision, O. L. Rider, in behalf of plaintiffs, and McGowan & Clark, and A. R. Heilig, in behalf of defendants, being present in open court; and the Court being duly and fully advised in the premises,

IT IS ORDERED, that the demurrer to the third separate answer and defense in the answer of John A. Clark is overruled, and the demurrer sustained as to the fourth separate answer and defense; that the demurrer is sustained as to the first and fourth separate answers of J. A. Jesson, Raymond Brumbaugh, E. R. Peoples and Jas. W. Hill, and overruled as to the third; sustained as to the fourth separate answer of Preston, and overruled as the third; and sustained as to the first separate further answer of R. C. Wood, J. A. Healey, and John L. McGinn,

and overruled as to the last one.

F. E. FULLER,  
District Judge. [118]

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[Title of Court and Cause.]

**Amended Answer of Defendants John A. Jesson,  
Raymond Brumbaugh, E. R. Peoples, James W.  
Hill, John A. Clark and George Preston.**

Comes now, the defendants, John A. Jesson, Raymond Brumbaugh, E. R. Peoples, James W. Hill, John A. Clark, and George Preston, and by leave of Court first had and obtained, file the following as their amended answer to the amended complaint on the file herein, and admit, deny and allege as follows, to wit:

Allege that the terms of service of these defendants were not concurrent, save and except that the defendant John A. Jesson was a director of said bank at all the times between March 12, 1908, and the time of the suspension of said bank on January 4, 1911, and the terms of office of the other defendants, appearing herein covered various periods during said time of service of said John A. Jesson, the terms of office of said other answering defendants being as follows, to wit:

James W. Hill, from September 12, 1908, to September 12, 1909; E. R. Peoples, from Sept. 12, 1908, to April 24, 1909; Raymond Brumbaugh, from March 13, 1909, to September 12, 1910; John A. Clark from May 12th, 1910, to January 4, 1911; George Preston, from September 12, 1910, to December, 1910; and

said defendants above named whose terms of office were not co-extensive with the terms of said John A. Jesson, have not sufficient information, knowledge or belief as to the matters charged against the directors at the periods when said answering defendants were not directors, to enable them to admit or deny the allegations of said amended complaint, from personal knowledge, and all of said answering defendants, with the exception of John A. Jesson, basing their denials [119] upon such lack of information, knowledge or belief, save and except as hereinafter expressly admitted, deny each and every and all of the matters and things contained in said amended complaint, alleged to have transpired during the terms of office of the directors at the periods during which these answering defendants were not directors of said corporation, and

The defendant James W. Hill unites with the defendant John A. Jesson in his admissions and denials of all matters and things charged against the directors that are alleged to have happened during the period said James W. Hill was a director of said bank, as above set forth; the defendant Raymond Brumbaugh unites with the defendant John A. Jesson in his admissions and denials of all matters and things charged against the directors that are alleged to have transpired during the time said Raymond Brumbaugh was a director of said corporation; the defendants E. R. Peoples unites with the defendant John A. Jesson in his admissions and denials of all matters and things charged against the directors that are alleged to have transpired during the time said

E. R. Peoples was a director of said corporation; the defendant John A. Clark unites with the defendant John A. Jesson in his admissions and denials of all matters and things charged against the directors that are alleged to have transpired during the time said John A. Clark was a director of said corporation; and the defendant George Preston unites with the defendant John A. Jesson in his admissions and denials of all matters and things charged against the directors that are alleged to have transpired during the time said George Preston was a director of said corporation.

Subject to the limitations and conditions last above set forth, these defendants, for an amended answer to the amended complaint on file herein, and to the acts and things alleged to have been done and performed during their respective terms of office, admit, deny and allege as follows, to-wit: [120]

### I.

Answering paragraph III of said amended complaint, these defendants deny that E. T. Barnette, R. C. Wood and James W. Hill circulated, or caused to be circulated, in the city of Fairbanks, or vicinity, or elsewhere, stock subscription lists, subscribing to the capital stock of said corporation, which said stock subscription lists, omitting the signatures, were, or are, in words and figures as set forth in paragraph III of said amended complaint.

### II.

Answering paragraph IV of said amended complaint, these answering defendants admit that said E. T. Barnette signed said subscription list for four



hundred forty shares of capital stock of said corporation, and that James W. Hill signed said subscription list for two hundred and twenty shares of said capital stock, but deny that the same was signed or subscribed by the said R. C. Wood for two hundred twenty shares or any shares, and deny that said James W. Hill, R. C. Wood and E. T. Barnette caused said subscription lists to be circulated or that they circulated the same.

### III.

Answering paragraph V of said amended complaint, defendants deny that the first meeting of the incorporators or subscribers to the capital stock of the Fairbanks Banking Company, a corporation, was held at Fairbanks on 12 March, 1908, but allege that said first meeting of the incorporators and subscribers to the capital stock of said Fairbanks Banking Company, a corporation, was held on 8 February, 1908; deny that on 12 March, 1908, a board of twelve directors for said corporation, named or selected by said E. T. Barnette, was elected; and deny that the said E. T. Barnette named or selected said board of directors, otherwise, than by placing the names of said [121] persons in nomination at the meeting of the subscribers and stockholders held 8 February, 1908.

### IV.

Answering paragraph VI of said amended complaint, these defendants deny that, on 13 March, 1908, said board of directors authorized the acquisition or purchase of the Fairbanks Banking Company, a co-partnership, or the assets in business of said Fair-

banks Banking Company, a copartnership, otherwise than as in the further, separate and affirmative defense of these defendants hereinafter set forth. Deny, except as in the further and separate answer of these defendants hereinafter set forth, that the purchase or acquisition of the assets or business of the Fairbanks Banking Company, a copartnership, or the terms thereof, were reduced to writing in a contract signed or executed by the parties, dated 16 March, 1908, and deny that a true copy of the same is attached to the amended complaint and marked "Exhibit 1."

V.

Admit that there were issued to E. T. Barnette 260 shares of the capital stock of said corporation, but deny that the same was done in accordance with said contract marked "Exhibit 1." Admit that there were 130 shares of the capital stock of said corporation issued to James W. Hill, but deny that the same was in accordance with the contract marked "Exhibit 1," or otherwise than as hereinafter set forth in the further and separate answer of these defendants. Deny that there were ever issued to R. C. Wood 130 shares of the capital stock of said Fairbanks Banking Company. Admit that the assets of said copartnership, enumerated and described in said contract "Exhibit 1," were transferred to said corporation, but deny that the same was done in accordance with said contract marked "Exhibit 1," or otherwise than as set forth in the further and separate answer of these defendants. [122]

## VI.

Answering paragraph VIII of said amended complaint, these defendants deny that, at or immediately prior to the transfer of the assets of the Fairbanks Banking Company, a copartnership, to the Fairbanks Banking Company, a corporation, the capital stock of the Gold Bar Lumber Company was carried on the books of said corporation in the sum of \$248,067.89, or a less sum than \$341,949.00. Deny that, at the date of said transfer, the value of said Gold Bar Lumber Company stock was a sum less than \$248,067.89, or was of a less value than the sum of \$341,949.00. Deny that said stock was transferred to and received by the said Fairbanks Banking Company, a corporation, at an arbitrarily increased or grossly fraudulent or any over-valuation of more than \$93,881.11, or any sum whatsoever, and deny that the same or all of it was done or accomplished with the full knowledge, co-operation, or consent of all the defendants Dan Ryan, C. J. Robinson, M. H. McMullen, C. E. Claypool, Robert Shephard, Hans Stark, John Flygar, J. A. Jesson, D. H. Jonas, David Yarnell and John P. Anderson, or of the defendants R. C. Wood, James W. Hill, B. H. Dusenbury, and John L. McGinn; and deny that at said time, the said R. C. Wood was the cashier of said Fairbanks Banking Company, a corporation, or that he was within the Territory of Alaska. Deny that the business of the Gold Bar Lumber Company was then, or ever since has been, or still is, of an extremely hazardous or speculative nature, and deny that the capital stock of said Gold Bar Lumber Com-

pany was not delivered to said Fairbanks Banking Company, a corporation.

#### VII.

Answering paragraph IX of said amended complaint, these defendants deny that the defendants R. C. Wood and John L. McGinn were then officers or directors of said corporation. Deny that, of the notes so sold or transferred to said corporation, a large amount was then past due, worthless or uncollectible paper was a sum in excess of \$53,000.00 or any sum; and deny that the same [123] are still unpaid or without substantial value; and deny that the list of notes, with the amounts thereof, as set forth in paragraph IX of said amended complaint, were worthless or uncollectible, or that the same are worthless and uncollectible; Deny that it was then and there well known to said defendants, directors, or officers aforesaid, or by each of them, or by the exercise of ordinary or of great care might have been so known to them or any or each of them, that the said notes listed in said paragraph IX of said amended complaint, were, at the time that the same were accepted by or transferred to the said Fairbanks Banking Company, a corporation, past due or worthless or without substantial value.

#### VIII.

Answering paragraph X of said amended complaint, these defendants deny that, for the 1502 shares of the capital stock of said corporation, issued on 14 March, 1909, the same were all paid for by promissory note, but allege that some were paid for in cash. Deny that a large amount of said notes



was, or still is, worthless or uncollectible, or that the same has never been paid, and deny that the amount of said worthless and uncollectible notes is of the face value of \$22,982.33 or any other sum.

### IX.

Answering paragraph XI of said amended complaint, these defendants deny that there was an issued capital stock of \$202,200.00 or a greater sum than \$189,200.00. Deny that, with no other assets than those of the Fairbanks Banking Company, a copartnership as mentioned and set forth in "Exhibit 1," added to said stock subscription notes of the face value of \$150,200.00 the Fairbanks Banking Company, a corporation, commenced business as a bank. Deny that the amounts and the assets set forth in said paragraph XI constituted all of the assets of said Fairbanks Banking Company, a corporation. Deny that the sum of \$200,000.00 belonging to E. T. Barnette was an alleged special deposit, and deny that the same was not in fact deposited by said E. T. Barnette. [124]

### X.

Answering paragraph XII of said amended complaint, these defendants deny that, on 16 March, 1908, when said Fairbanks Banking Company, a corporation, commenced business, said corporation was actually insolvent in this, or otherwise, that its assets were then insufficient in value to pay its debts; but allege that in truth and in fact the assets of said corporation at said time were more than ample to pay all of its debts and obligations. Deny that the actual insolvency of said bank was then known to the direc-

tors or officers of said institution hereinabove mentioned, or that, by the exercise of great, ordinary, or other care, might have been known. Admit that said bank on 16 March, 1908, was on a scrip basis, but allege that all the other banks in the Fairbanks Precinct, and the major portion of the banks throughout the United States, were upon the same scrip basis owing to the financial flurry in existence at that time.

### XI.

Answering paragraph XIII of said amended complaint, these defendants deny that said bank, or the defendants mentioned in said amended complaint, or the officers, directors and employees of said bank, at all times or any times falsely and wrongfully, or otherwise, represented or held out to the public generally, or otherwise, that said Fairbanks Banking Company, a corporation, had paid up capital stock of \$300,000.00.

### XII.

Answering paragraph XIV of said amended complaint, these defendants allege that they are informed and believe, and basing their denial on such information and belief, deny that John L. McGinn was a director of said bank from and including 13 September, 1909 to 12 May, 1910. Deny that John L. McGinn and R. C. Wood, or either of them, continued to act as directors of said bank subsequent to the first day of May, 1910.

### XIII.

Answering paragraph XVII of said amended complaint, these defendants deny that the defendant L.

N. Jesson acted as an executive [125] officer of said corporation, or as a member of the executive committee thereof, until 12 September, 1910, or any other time.

#### XIV.

Answering paragraph XVIII of said amended complaint, these defendants admit that, at the meeting of the board of directors, held 12 March, 1908, R. C. Wood was elected cashier of said bank, but deny that the said R. C. Wood thereupon accepted said office or entered on the duties as cashier prior to 17 April, 1908. Admit that he continued to perform the duties of cashier of said Fairbanks Banking Company, a corporation, until 29 June, 1908, but allege in this connection that on 12 May, 1908, said R. C. Wood tendered his resignation to said corporation as cashier and requested to be relieved of his duties, but at the request of the board of directors continued to act as cashier until 29 June, 1908.

#### XIV.

Answering paragraph XIX of said amended complaint, these defendants deny that, shortly after the said Fairbanks Banking Company, a corporation, commenced business, said corporation wrongfully or unlawfully began to reduce its issued capital stock by accepting the surrender thereof, or giving in return therefor either cash or the stock subscription notes given for said stock; and deny that a list of said stock so surrendered, together with the dates of surrender and the number of shares surrendered and the names of the parties surrendering or the amount of cash or subscription notes returned thereof, is as

is set forth in the list set out in said paragraph XIX of the amended complaint. Deny that the defendant R. C. Wood ever surrendered any issued capital stock to said Fairbanks Banking Company, a corporation, and deny that he was ever the owner of the same. Deny that the defendant John L. McGinn ever sold or surrendered, or that the Fairbanks Banking Company, a corporation, ever received any stock of the said John L. McGinn, or that said corporation ever paid the said John L. McGinn any money therefor. [126]

Deny that, during all the times from and including said 20 June, 1908, to and including said 25 October, 1910, the liabilities of said corporation to its general creditors greatly exceeded its assets, and deny that, by accepting the surrender of its capital stock and returning, or returning, therefor cash and subscription, or subscription notes, as in said paragraph XIX alleged, the assets of said corporation to which said creditors could look for payment of their claims were further decreased, or that the same were, in the manner or amounts aforesaid, withdrawn or divided among the said stockholders of said corporation. Deny that the surrender of said stock or the return of cash or notes, as in said paragraph set forth, were made to or by said corporation with the full knowledge, consent or approval of the defendants or each of them who constituted its board of directors or officers, on the dates set forth in said paragraph XIX, or that, by the exercise of ordinary, or great, care the same could have been known to them or each of them. Deny that any stock surren-



dered to said corporation, after the 15th day of March, 1909, was done with the knowledge, consent, or approval of the board of directors of said bank, or with the knowledge, consent, or approval of the defendants.

Deny that James W. Hill was a director at any time after September 12, 1909; deny that E. R. Peoples was a director at any time after April 24, 1909; and deny that George Preston was a director at any time after December, 1910.

#### XIV-A.

Answering paragraph XX of said amended complaint, these defendants deny that there were issued 2,020 shares of the capital stock of said corporation on the 4th day of March, 1908, or a greater amount than 1,892 shares, and as to whether, by reason of the surrender or cancellation of shares, as mentioned in said paragraph XIX of the said complaint, the total issued capital stock never exceeded 2,156 shares, or after the 9th day of November, 1909, never exceeded 726 shares, these defendants have no knowledge or information sufficient to form a belief, and therefore deny the same. [127]

#### XIV-B.

Answering paragraph XXI of said amended complaint, these answering defendants deny the allegations therein contained, save and except that they admit that the interest was computed on the loans of the old Fairbanks Banking Company up to March 15, 1908, and that the board of directors on March 12, 1908, authorized and directed that the interest on the notes and discounts be so computed and be

payable on or before December 31, 1908, and that the said amount was as alleged in said paragraph, and was credited on the "old bank interest account"; and admit the issuance to R. C. Wood of the certificate of deposit alleged therein; admit the withdrawal of five thousand dollars by said defendant Hill; admit the credits placed to E. T. Barnette, James W. Hill and R. C. Wood; and admit the payment of said sum to them; and admit that the money was paid from the funds of the bank regardless of whether or not it had been collected from the makers of said notes.

#### XIV-C.

Answering paragraph XXIII of said amended complaint, these defendants deny that John L. McGinn, on 13 September, 1909, was a director of said Fairbanks Banking Company, a corporation. Deny that said L. N. Jesson was a member of the executive committee of said corporation. Deny that, on 13 September, 1909, the said Washington-Alaska Bank of Washington had in its assets the sum of \$70,040.10 of loans past due, and deny that the same were at said time, or still are, without substantial value, and deny that the said Washington-Alaska Bank of Washington was carrying its real estate and fixtures at \$10,000.00 or any sum in excess of their real value. Deny that said Fairbanks Banking Company, a corporation, with the *excess* knowledge, consent or approval of the defendants in said paragraph XXIII mentioned, the then directors or officers in said paragraph mentioned, on 13 September, 1909, or at any other time, paid to the stockholders of the Washington-Alaska Bank of Washington, for

said capital stock thereof, a premium or bonus or more than \$100,000.00 or any other sum over and above the then paid-in capital stock of [128] the Washington-Alaska Bank of Washington, or over and above the actual value thereof. Deny that thereby said defendants wrongfully or fraudulently lost or dissipated more than \$100,000.00, or any sum of the funds or assets of said Fairbanks Banking Company, a corporation, or greatly, or at all, aggravated or increased its already insolvent condition, and deny that said Fairbanks Banking Company at said time was insolvent. Deny that said Fairbanks Banking Company selected and appointed the defendant R. C. Wood manager of the three banks, viz.: the Fairbanks Banking Company, the Washington-Alaska Bank, or the First National Bank, and deny that the said three banks continued thereafter until on or about 12 May, 1910, to be managed or operated by the defendant R. C. Wood as manager. Deny that the same were but ostensibly managed and operated as separate and distinct and unassociated banks, and in this connection these defendants allege that the said R. C. Wood was appointed and selected by the said Fairbanks Banking Company as an advisory manager of said three banks, with authority only to confer and consult with the officers of said Fairbanks Banking Company and said Washington-Alaska Bank.

#### XIV-D.

Answering paragraph XXV of said amended complaint, these defendants deny that, on 10 April, 1910, the Fairbanks Banking Company, a corporation, was

controlled or was in the control or management of the Washington-Alaska Bank, and allege that, at said time and prior and subsequent thereto, the affairs of the Washington-Alaska Bank were managed by its own board of directors, and that said Fairbanks Banking Company had no voice in the management of the affairs of said bank other than that of a stockholder. Deny that said Fairbanks Banking Company, a corporation, caused said Washington-Alaska Bank of Washington to declare or pay to the Fairbanks Banking Company, a corporation, a dividend of thirty-three and one-third per centum of the capital stock of said Washington-Alaska Bank of Washington, amounting to the sum of \$50,000.00, and in this connection these defendants allege that the directors of said Washington-Alaska [129] Bank did, on said date, declare a dividend of the sum of \$50,000.00 out of its surplus and undivided profits. Deny that, at the time said dividend was declared and for a period of seven months prior thereto, the management of the Fairbanks Banking Company, a corporation, the Washington-Alaska Bank of Washington, and the First National Bank, had been under the general management of the defendant R. C. Wood, otherwise than as has been set forth in the preceding paragraph. Admit that the amount of the surplus and undivided profits of the Washington-Alaska Bank had decreased from the sum of \$66,839.16 to \$57,169.76, but deny that said decrease was a net loss of \$9,669.40, or any amount, for seven months' operation, and defendants allege that said decrease was the result of the charging off of some



bad loans. Admit that, on said day that said dividend was declared, the Washington-Alaska Bank of Washington had a capital stock of \$150,000.00 and a surplus of \$57,169.76, but deny any information or knowledge sufficient to form a belief as to whether, on said date, it had among its assets, loans and discounts past due without substantial value, or which had not yet been collected or cannot be collected, amounting to the sum of \$76,005.35, or *an* other amount. Admit that it had invested in a certificate of deposit of the Fairbanks Banking Company the sum of \$125,000.00, but deny that said Fairbanks Banking Company was insolvent and allege that said certificate was paid in full.

## XIV-E.

Answering paragraph XXVI of said amended complaint, these defendants deny that, on 12 April, 1910, said Fairbanks Banking Company, a corporation, acting by and through its then board of directors, by a resolution entered on the minutes of said Fairbanks Banking Company, a corporation, wrongfully and fraudulently declared and ordered to be paid on its then outstanding capital stock of \$1,686,00 a dividend of twenty per centum, amounting to \$33,720.00.

## XIV-F.

Answering paragraph XXVII of said amended complaint, these defendants deny that, on 12 April, 1910, or at or before the time when said dividend mentioned in the preceding paragraph was ordered [130] to be paid, the said Fairbanks Banking Company, a corporation, was, or long prior thereto

had been, in a grossly insolvent or failing condition, Deny that said Fairbanks Banking Company, a corporation, had, on said 12 April, 1910, no earnings, surplus, or undivided profits on hand, out of which said dividend could legally be paid, and deny that, at or prior to said date, said Fairbanks Banking Company, had neither capital stock nor surplus. Deny that the Washington-Alaska Bank of Washington was a subsidiary corporation to the Fairbanks Banking Company, a corporation, and deny that the assets carried by the Fairbanks Banking Company on its books of \$75,000.00 as a premium on the capital of said Washington-Alaska Bank, had no existence whatever and that the same was purely imaginary or of no value. Deny that the said Fairbanks Banking Company, a corporation, on said 12 April, 1910, carried as an asset, at their face value, loans or discounts which were past due, or were worthless, or that have not yet been paid, or that cannot be collected, in a sum amounting to \$118,250.47, or any other sum. Deny that the capital stock of the Gold Bar Lumber Company originally had been, or still was on said 12 April, 1910, fraudulently over-valued by a sum in excess of \$93,881.11, or any sum. Deny that said dividend amounting to the sum of \$33,720.00 was wrongfully, unlawfully, or fraudulently declared or paid by said Fairbanks Banking Company, a corporation, with the express knowledge, consent, or approval of the defendants D. H. Jonas, J. A. Jesson, John Flygar, C. J. Robinson, David Yarnell, Robert Shepard, R. Brumbaugh, John L. McGinn, R. C. Wood, J. A. Jackson, or James W.

Hill, or of the defendant L. N. Jesson (and deny that said L. N. Jesson, was a member of the executive committee of said corporation), or of R. C. Wood (and deny that said R. C. Wood was its general manager), out of, by, or with the funds and moneys of the depositors of said Fairbanks Banking Company, a corporation, and not by, out of, or with the surplus earnings and undivided profits of said Fairbanks Banking Company, a corporation, and as to whether, on said 12 April, 1910, said Fairbanks Banking Company, a corporation, owed to depositors the [131] sum of \$960,689.79, these defendants have no knowledge or information sufficient to form a belief and therefore deny the same.

#### XIV-G.

Answering paragraph XXVIII of said amended complaint, these defendants deny that, shortly prior to 12 May, 1910, said E. T. Barnette, as president of the Fairbanks Banking Company, a corporation, and of the Washington-Alaska Bank of Washington, by and with the knowledge and consent of the then directors and officers of said Fairbanks Banking Company, a corporation, wrongfully sold or transferred to the defendants R. C. Wood, and John L. McGinn, the entire capital stock of said First National Bank, for the sum of \$125,000.00. Admit that said sale and said transfer of said stock of said First National Bank to the defendants R. C. Wood and John L. McGinn was claimed to have been made under and pursuant to an option, claimed to have been given to the defendant Wood at the time said stock was purchased by said Fairbanks Banking

Company, a corporation, and the said Washington-Alaska Bank of Washington, but deny that said option was entered into without consideration and was void and allege that said option did in fact exist. Deny that the capital stock of said First National Bank was carried by the said Fairbanks Banking Company, a corporation, for any entire year, without any interest or profit paid or received by said Fairbanks Banking Company, a corporation, and solely, or solely, for the use, benefit, and profit of said defendants R. C. Wood and John L. McGinn, and deny that the same was done, suffered, or permitted by and with the knowledge, consent, or approval of all the then directors and officers of the said Fairbanks Banking Company, a corporation, and deny that, by said act, the said Fairbanks Banking Company, a corporation, was damaged in a large sum, to wit, in a sum in excess of \$25,000.00, or any sum.

#### XIV-H.

Answering paragraph XXIX of said amended complaint, these defendants deny that, on 12 May, 1910, and long prior thereto, the said R. C. Wood and John L. McGinn had full or complete knowledge, [132] or means of knowledge, of the grossly insolvent and failing condition of said Fairbanks Banking Company, a corporation, and deny that, at said time, said Fairbanks Banking Company, a corporation, was in a grossly insolvent or failing condition. Admit that they knew that said E. T. Barnette had not, at said time, withdrawn his deposit of \$200,000.00. Deny that said R. C. Wood and John L. McGinn then or there knew that said E. T. Bar-



nette was likewise aware of the said insolvent or failing condition of said Fairbanks Banking Company, a corporation, and deny that said Fairbanks Banking Company, a corporation was insolvent or in a failing condition. Deny that said Wood and McGinn knew that said Barnette could or would shortly withdraw in cash the whole of said alleged special deposit of two hundred thousand dollars. As to whether said E. T. Barnette did actually withdraw, within sixty days after 12 May, 1910, said sum of two hundred thousand dollars, these defendants have no knowledge or information sufficient to form a belief and therefore deny the same. As to whether said E. T. Barnette, by withdrawing said sum of two hundred thousand dollars, thereby preferred himself as a creditor of said Fairbanks Banking Company, a corporation these defendants allege that they are without sufficient legal knowledge or information sufficient to form a belief and therefore deny the same, and as to whether the withdrawal of said money and all of the things alleged in said paragraph XXIX of plaintiff's amended complaint were done with the knowledge, consent, and approval of the then board of directors and officers of said Fairbanks Banking Company, a corporation, these defendants have no knowledge or information sufficient to form a belief and therefore deny the same.

#### XV.

Answering the allegations of paragraph XXX of said amended complaint, these answering defendants admit the consolidation of the Fairbanks Banking Company and the Washington-Alaska Bank, in the

manner therein set forth, but allege that they have no knowledge or information as to the amount due to the depositors at the time of said consolidation, as therein alleged, and, by reason of their lack [133] of information and belief in the matter, deny that there was owing to the said depositors the sum of \$947,800.29.

Further answering the allegations of said paragraph XXX these answering defendants deny that said Washington-Alaska Bank of Washington *and* no undivided profits on hand at the time of said consolidation, and avers, that, as they are informed and believe, and therefore so allege on such information and belief, the said Washington-Alaska Bank of Washington had on hand undivided profits in the sum of \$4,658.92; that answering defendants are informed and believe and basing their denial on such information and belief, deny that the capital stock of the said Washington-Alaska Bank of Washington was seriously impaired, or impaired in any way, as alleged in said paragraph, or at all; deny that said bank had on hand at said time loans and discounts in the sum of \$100,704.98, which were bad, worthless, and uncollectible, and have not been paid, or that were bad, or worthless, or uncollectible; allege that they have no information or belief as to whether the loans referred to in said paragraph were carried on the books of the Washington-Alaska Bank of Washington at their face value or at their present worth, and allege that they have no information or knowledge as to whether said notes have been paid, but are informed and believe that a portion of said notes

has since been paid, and basing their denial on such information and belief and lack of information, deny that the notes of the face value of \$100,704.98, carried by the Washington-Alaska Bank of Washington on its books on the 1st day of October, 1910, have not been paid; deny that, on the 1st day of October, 1910, or at any other time alleged in plaintiff's amended complaint, the directors of the Fairbanks Banking Company knew that notes, of the value of \$100,704.98, carried on the books of the Washington-Alaska Bank of Washington were worthless, or bad, or uncollectible, or that any material portion thereof was so worthless, or bad, or uncollectible; admit that after said consolidation, said Fairbanks Banking Company, a corporation, continued to carry on and conduct a banking business at the [134] town of Fairbanks as formerly, but under the name of the Washington-Alaska Bank, and deny that, at all times after the first day of October, 1910, or at any time after said 1st day of October, 1910, said directors, wrongfully, fraudulently, and without right, or wrongfully, or fraudulently, or without right, carried on the books of the said Washington-Alaska Bank, as a book asset, the item "Premium Washington-Alaska Bank stock, \$75,000.00"; admit that said item was carried on the books, as therein set forth, but deny that said asset had no existence whatsoever, or that the same was purely imaginary, false, and fraudulent, or imaginary, or false, or fraudulent.

#### XVI.

Answering the allegations of paragraph XXXI of said amended complaint, these answering defendants

admit that, subsequent to the 1st day of October, 1910, and up to and including the 4th day of January, 1911, the Washington-Alaska Bank, formerly the Fairbanks Banking Company, continued actively in business as a bank and received deposits from the public generally, but deny that said bank was, during said time, insolvent and in a failing condition or insolvent, or in a failing condition, as alleged in said paragraph; admit the institution of the action entitled Tanana Valley Railroad Company, a corporation, and John Zug, Plaintiffs, vs. Washington-Alaska Bank, the appointment of F. W. Hawkins as receiver; that he thereafter qualified and entered upon his duties on the 5th day of January, 1911, and that thereafter on January 6, 1911, said District Court, by order duly entered, appointed E. H. Mack jointly with said Hawkins, receiver of said Washington-Alaska Bank, and that said Mack thereupon duly qualified and entered upon the discharge of his duties as such receiver, and that said Hawkins and Mack thereafter continued to act as joint receivers of said Washington-Alaska Bank until the 12th day of May, 1911; admit their resignation on the 12th day of May, 1911, and admit the appointment of F. G. Noyes as receiver of said Washington-Alaska Bank, but deny each and every other matter and thing therein contained, and specifically deny [135] that the allegations therein contained that "said F. G. Noyes thereupon duly qualified as such receiver and ever since has been and now is the duly qualified and acting receiver of Washington-Alaska Bank."



## XVII.

Answering the allegations of paragraph XXXII, these answering defendants aver that they have no knowledge or information as to the exact amount of the liabilities of said Washington-Alaska Bank on the 4th of January, 1911, as alleged in said paragraph, but deny that the assets of said Washington-Alaska Bank were, by reason of wrongful, fraudulent, and negligent acts of these answering defendants, or of the board of directors of which these defendants were members, rendered insufficient to pay said liabilities in full, and deny that the assets of said bank were impaired, injured, or rendered insufficient to pay the liabilities of said bank, by reason of any act or thing done by these answering defendants, or their codirectors during the times these defendants were members, respectively, of said board of directors.

## XVIII.

Answering the allegations of paragraph XXXIII of plaintiff's said amended complaint, these answering defendants deny that the receivers have reduced to cash as far as possible the assets of the Washington-Alaska Bank; admit that there have been paid on the acknowledged and proven liabilities of the bank, dividends aggregating fifty per centum, and answering defendants allege that they have no knowledge or information as to whether or not \$12,627.70 of said dividends have either not been called for or have been withheld by order of Court; and answering defendants are informed and believe, and therefore so allege, that a portion of the claim of

the Dexter Horton National Bank of Seattle has been paid, and basing their denial on such information and belief, deny that there is due or owing to said Dexter Horton National Bank of Seattle the sum of \$128,899.37, but allege that they have no knowledge of how much is due to said bank; answering defendants further allege that [136] they have no information as to whether creditors to the amount of \$4,132.62 have failed to prove their claims or have not demanded dividends.

#### XIX.

Answering the allegations of paragraph XXXIV, these answering defendants admit that, on the 4th day of January, 1911, there was due and owing to the Dexter Horton National Bank of Seattle, a large sum of money, the exact amount of which is to these answering defendants unknown, and admit the remainder of said paragraph.

#### XX.

Answering the allegations of paragraph XXXV of plaintiff's amended complaint, these answering defendants deny that the stock of the Gold Bar Lumber Company belonging to the Washington-Alaska Bank, a corporation, is subject to any claims of the Dexter Horton National Bank of Seattle, other than its claim as a general creditor against the same, and allege that they have no information or belief as to whether or not F. G. Noyes as receiver of the Washington-Alaska Bank, has made efforts to sell said stock, or that he has been unable to obtain for said stock an offer in excess of the claim of said Dexter Horton National Bank, or any other sum what-

soever; so neither admit nor deny said allegation; answering defendants are informed and believe, and basing their denial on such information and belief, deny that the stock of the Gold Bar Lumber Company has no value in excess of the claim of the Dexter Horton National Bank of Seattle, and deny that any valuation in excess of said sum is wholly uncertain and speculative.

## XXI.

Answering the allegations of paragraph XXXVI of plaintiff's amended complaint, these answering defendants allege that they have no exact information or knowledge as to the character and amount of the assets of said bank now in the hands of the receiver, other than the Gold Bar Lumber Company stock, as alleged in said paragraph, sufficient to form a belief, and expressly deny that there are not now in the hands of the receiver, and were not in the hands of said receiver at the time of the filing of said complaint, other assets [137] than the assets set forth in said paragraph, available for the purpose of paying the creditors of said bank.

Answering the allegation that bills, notes, and overdrafts of the face value of \$266,020.31 are not of that value, these answering defendants allege that they have no information or knowledge sufficient to form a belief as to said matters, and basing their denial upon such lack of information and belief, deny the same. Deny that only \$80,000.00 thereof is owing from solvent debtors and can be collected, and deny that the balance thereof is bad, worthless, and uncollectible, or bad, or worthless, or uncollect-

ible. Answering defendants allege that they have no knowledge as to the actual cash or market value of the real estate, furniture, and fixtures, sufficient to form a belief in order to enable them to admit or deny the same,

## XXII.

Answering the allegation of paragraph XXXVII of plaintiff's said amended complaint, these defendants deny the matters and things therein set forth.

## XXIII.

Answering the allegations of paragraph XXXVIII of said amended complaint, these answering defendants deny each and every matter and thing therein contained.

## XXIV.

Answering the allegations of paragraph XXXIX of plaintiff's said amended complaint, these answering defendants deny each and every matter and thing therein contained.

James W. Hill expressly denies that he was a director of said bank at any time after the 12th day of September, 1909, and alleges that he resigned as such director on or about the 12th of September, 1909, and left the Territory of Alaska about the 19th day of September, 1909, and did not return thereto until after the suspension of said bank, and did not participate in any meeting of any of said directors after his said resignation.

E. R. Peoples, particularly answering paragraph XXII of said amended complaint relating to the purchase of the Washington-Alaska [138] Bank, alleges that he did not participate in said purchase and that he was not a director and was not present



at the meeting of the board of directors when said purchase was made, and that his resignation as such director had been sent in on the 24th day of April, 1909, to the secretary of said bank, and that at said time he sold his stock and was no longer a director and did not participate in any meeting of said directors thereafter.

For a further, first and separate affirmative answer and by way of a defense, these answering defendants allege as follows, to wit:

That at all the times mentioned in plaintiff's amended complaint, to wit, from the time of the organization of the Fairbanks Banking Company, a corporation, under the laws of the State of Nevada, in the month of March, 1908, up to and including the 4th day of January, 1911, E. T. Barnette was a member of the board of directors and president of said corporation, was the active head thereof, and was at all times thoroughly conversant with the affairs of said bank.

That one of the principal assets of said bank, to wit, three-fourths of the capital stock of the Gold Bar Lumber Company, a corporation, organized under the laws of the State of Washington, was carried on the books of the bank at a sum of \$341,941.00, and was purchased by the Fairbanks Banking Company, a copartnership, consisting of E. T. Barnette, R. C. Wood, and James W. Hill. and was, as these answering defendants are informed and believe and so allege, purchased by said E. T. Barnette for said copartnership, and he was at all times familiar with the affairs of said corporation known as the Gold

Bar Lumber Company, and with the value of its properties, the extent and variety of its assets and the amount of its liabilities, and knew the value of said stock.

That during the greater part of the time that said E. T. Barnette was a director of said corporation and president thereof, he was actively engaged in mining in the Fairbanks Precinct in the Territory of Alaska, and was familiar with the financial standing [139] and moral responsibility of the majority of men who were carrying on mining operations or engaged in business in said Fairbanks district, and as answering defendants are informed and believe, and so allege, passed on and gave his judgment on most of the loans that were made during the time that he was president of said bank while in the Territory of Alaska.

That with the exception of two other directors, said E. T. Barnette is the only director who was a director from the time of the organization of said bank until its close, and he was, at all times during the existence of said banking corporation, recognized by the public at large as a man of wealth, and these answering defendants are informed and believe and so allege, that a great deal of the business of said bank was acquired by, through, and by reason of the personal friendship between depositors and other persons doing business with said bank and the said E. T. Barnette, and that he alone of all the directors, answering defendants, here, had personally visited the properties of the Gold Bar Lumber Company and has first-hand knowledge and information as to

their value and the condition thereof.

That none of the other directors of said bank were paid any salary, and all the other directors were men engaged in other lines of business and who served as directors more from a sense of duty than for gain. That said E. T. Barnette was the only one who was in a position to devote any considerable portion of his time to the affairs of said bank, and the said E. T. Barnette had an office in said bank, and the officers and employees of said bank were subject to receive orders from him, within the limits prescribed by the by-laws of said banking corporation, and all the books, records, loans, notes, and discounts of said bank were readily accessible to him, and all the affairs of said bank were by him thoroughly understood.

That at the time of the suspension of said bank, the said E. T. Barnette was not in the Territory of Alaska, but was in the State of California, and after the suspension of said bank and about the month of February, 1911, and long prior to the commencement of [140] this action, after he had been advised that said bank had been suspended and receivers appointed therefor, the said E. T. Barnette voluntarily returned to Fairbanks, and entered into negotiations with the then receivers of said bank with the purpose of arranging for the payment of any indebtedness that might remain due to the creditors of said bank after the assets of said bank had been realized on, and to that end he proposed to said receivers that he would deposit with them income-bearing and other properties greatly in excess of the

amount that would be required to satisfy and pay all sums that would remain due to the creditors of said bank after the collection of the notes due to said bank and the realization by said receivers on the assets of said bank other than notes and mortgages, and at said time said E. T. Barnette submitted a proposition in writing to said receivers, wherein he acknowledged that he himself was liable for any irregularities that might have occurred in the management of said bank and for any loss that had been sustained by reason of any of the acts and things that are in plaintiff's said amended complaint alleged to have been performed and done by the directors and officers of said bank, and the said E. T. Barnette then and there promised and agreed to pay all sums that might be necessary to be paid in order to settle the claims of the creditors in full, together with interest on said indebtedness at the rate of six per cent per annum from the time of the suspension of said bank.

That by reason of said offer and on or about the 18th day of March, 1911, said E. T. Barnette executed and delivered to said receivers of said bank an instrument in writing, termed and designated a trust deed, wherein he acknowledged his liability for the payment of the amounts due to the depositors and holders of unpaid drafts issued by said bank, as well as any other indebtedness of said bank for which he might be liable, by reason of any mismanagement on his part as president and one of the directors of said corporation, which said deed conveyed to said receivers and their successors, in interest, in trust for the purposes therein specified, certain improved



rural property situate in the Republic of Mexico, certified copy of which deed is now in the possession of the plaintiff in the [141] above-entitled action, and to which reference is hereby specifically made for more particular description thereof.

That, at said time and place, the said E. T. Barnette and Isabelle Barnette, his wife, executed and delivered to said receivers a trust deed, conveying all the real property of every nature and description situate in the Fairbanks Precinct, Territory of Alaska, to which said E. T. Barnette and Isabelle Barnette, had title, which said property consisted in income-producing mining claims and income-producing town property situate in the Town of Fairbanks, Territory of Alaska, which said deed was in the same form as the Trust Deed last hereinabove referred to, save and except that it was provided therein that all moneys derived as rentals from any of the said town property and as royalties from said mining claims should be collected by said receivers and disbursed and paid out *in* the creditors of said bank at any time on the orders of the District Court.

That said Isabelle Barnette was never at any time a director of said bank or in any way liable for any of its said indebtedness and she joined in said transfer and in said petition to the Court to accept said trust deeds by reason of the love and affection she bore for her said husband and to assist him in paying the indebtedness of said bank.

That as these answering defendants are informed and believe and so allege, said deeds were delivered for the express purpose of securing the payment not

only of the depositors and the holders of the unpaid drafts, but also all other indebtedness of every nature and description owing by said bank at the time of its suspension, together with interest at the rate of six per centum per annum from the time of its said suspension.

That the said E. T. Barnette in said instrument, agreed as promised to pay said depositors and holders of unpaid drafts in full for all sums due to them, with interest as aforesaid, not later than the eighteenth day of November, 1914.

That thereafter the Judge of the District Court for the Fourth Judicial Division of the Territory of Alaska referred said application to the receivers for their consideration, and they thereafter, [142] after considering said proposition and taking up the matter with the attorney for said receivers, appointed by the Court, petitioned the Court for leave to accept said securities, subject to the terms and conditions therein specified, for the uses and purposes therein set forth.

That, thereafter, the Judge of the District Court for the Fourth Judicial Division of the Territory of Alaska, in writing, authorized and directed said receivers to receive the said deeds and to enter into possession of the properties situate in the Fairbanks Precinct, subject to the terms and conditions set forth in said written proposition of said E. T. Barnette and Isabelle Barnette and the terms and conditions of said trust agreement.

That these answering defendants are informed and believe and so allege that, at the time said proposi-

tion was made by said E. T. Barnette and Isabelle Barnette, his wife, the attorneys for the receivers of said bank had prepared a complaint against said E. T. Barnette and some of the other directors of said bank, charging the said E. T. Barnette and said other directors with most, if not all, the alleged wrongful acts contained in plaintiff's amended complaint herein, together with other alleged wrongful acts, and was about to file said complaint with the Court and serve said defendants, for the purpose of recovering from the said E. T. Barnette and other directors of said bank any damages that might have been sustained by the said bank by reason of the said alleged wrongful acts of said E. T. Barnette and the said other directors.

That when said deeds were executed by the said E. T. Barnette and Isabelle Barnette, and were ordered by said Court to be accepted by the said receivers, it was understood by the said receivers, by the attorney for said receivers and by said E. T. Barnette that the execution of said deeds, the delivery thereof, and their acceptance by the said receivers was to be in full settlement of all claims of every nature and description that might then exist against said E. T. Barnette and the other directors by reason of or because of any of the acts and things done and performed by the said [143] directors, including the said E. T. Barnette, during the time of his incumbency in office, and these answering defendants are informed and believe and so allege that said deeds were so accepted as a full release and discharge of all liability of said E. T. Barnette and his codirectors,

for any and all alleged wrongful acts and things done or performed from the time of the organization of said corporation, the Washington-Alaska Bank, formerly the Fairbanks Banking Company, until the time of its suspension.

That immediately after the execution of said instrument, as these answering defendants are informed and believe and so allege, said receivers entered into possession of the real property so deeded to them by said E. T. Barnette and Isabelle Barnette, and proceeded to collect all rentals due and to recover all royalties that thereafter became due to said E. T. Barnette from any of the mining claims by him deeded to said receivers, and received and collected all moneys that were due to said Isabelle Barnette as rentals from any of the properties deeded by her to said receivers, and as these answering defendants are informed and believe and so allege said receivers and their successors in interest, to wit, plaintiff in this action, have received from the rentals of the properties as deeded to them and as royalties from the mining claims deeded to them, a large sum of money, to wit, upwards of thirty thousand dollars, which said money is now in the possession of said receiver, plaintiff in this action, and subject to be distributed to the creditors of said banking corporation now in the hands of said receiver.

That in said deeds of E. T. Barnette and Isabelle Barnette to the properties in the Fairbanks district, it was also provided that any of said property could be sold at any time on the agreement of said E. T. Barnette and Isabelle Barnette and the said re-



ceivers, and as these defendants are informed and believe and so allege, certain property so covered by said transfer has in fact been sold by the receiver and said E. T. Barnette, under and by virtue of the terms of said agreement, and the moneys realized from the sale thereof have [144] been delivered to the receiver, plaintiff in this action, and are now in his hands.

That the properties conveyed by said E. T. Barnette and Isabelle Barnette consisted in improved and income-producing properties, the last situated in the business section of the town of Fairbanks, Alaska, the rental of which is unknown to these answering defendants, but which they are informed and believe and so allege amounts to approximately six hundred dollars a month, and all the property so conveyed, did at the time of said conveyance belong to said E. T. Barnette and Isabelle Barnette, and is, as these answering defendants are informed and believe, and so allege, worth the sum of not less than one million dollars, and said sum is greatly in excess of the debts and unpaid liabilities of said bank and was greatly in excess thereof at the time of the institution of this action.

That these answering defendants are informed and believe and so allege that said deeds were accepted in full accord and satisfaction of all liabilities of said E. T. Barnette as president and director of said bank, from the time of its organization until its suspension, and of his codefendants during the several periods of their incumbency during the periods last above set forth, and was made for the express pur-

pose of preventing the wasting and dissipating of the assets of said corporation in the prosecution of suits for the purpose of attempting to enforce said alleged liability against said directors, including said E. T. Barnette, and against said E. T. Barnette as president of said bank, and was in full accord and satisfaction of all acts and things done and performed by all officers of said bank other than the directors thereof.

That said trust, as these answering defendants are informed and believe and so allege, has been partially executed, and in the event that said receiver has not realized sufficient moneys on the assets of said corporation before the 18th day of November, 1914, to pay all the indebtedness of said corporation, the said E. T. Barnette will pay said remaining indebtedness, or will permit said properties deeded in trust, to be sold and the entire proceeds, or so much thereof as may be necessary, applied in full satisfaction of all outstanding indebtedness and liabilities of said bank, together with [145] interest at the rate of six per centum per annum from the time of the suspension of said bank until said indebtedness is paid in full.

That, as these answering defendants are informed and believe and so allege, at the time of the execution of said trust deeds and the time of the delivery thereof to said receivers, practically the only indebtedness of said bank, other than the indebtedness due to said depositors and the holders of unpaid drafts, was a certain claim due to the Dexter Horton National Bank of Seattle, State of Washington, in a sum in excess of one hundred twenty thousand dollars, but

that said claim was supposed to be secured by reason that said Dexter Horton National Bank had in its possession, and was claiming that it held as security, all the stock of the Gold Bar Lumber Company belonging to the Washington-Alaska Bank, which said stock was then and there recognized by said receivers and the attorney for said receivers and the Court as being of a value greater than sufficient to pay said claim of said Dexter Horton National Bank, and that if said stock was held as collateral security for said loan, if said pledge was foreclosed, and the said stock of the Gold Bar Lumber Company sold, it would more than pay the indebtedness due to the said Dexter Horton National Bank, and by reason thereof, no reference was made in said trust deed to the indebtedness, other than the indebtedness due to the depositors and to the holders of unpaid drafts.

That, after the delivery of said trust deeds as aforesaid, the then receivers of said bank abandoned all idea of instituting a suit against said E. T. Barnette or any other directors of said bank, and no suit was instituted by them during the time that they were in office, and it was not until the present receiver plaintiff in this action was appointed that any suits or actions were instituted and when this action was instituted said E. T. Barnette was not joined as a party defendant and no attempt was made to hold him liable for any of the alleged malfeasances in office.

That since the time of the institution of said action, the said E. T. Barnette has twice, at least, and for protracted periods, [146] been within the Ter-

ritory of Alaska, and within the jurisdiction of this Court and could have been served with process.

That by reason of the acceptance of said deeds by said receivers, the execution thereof, and the receipt of income from from improved income-bearing properties, all of which was, as these answering defendants are informed and believe, and so allege, accepted in full accord and satisfaction of all alleged wrongful acts performed by said E. T. Barnette and other directors of said bank, including these answering defendants, and by reason of the release of said E. T. Barnette as a joint tort feisor, these answering defendants are released from all liability of every nature and description whatsoever under and by reason of or by virtue of any of the acts or things done or performed while a director of said Fairbanks Banking Company, afterwards Washington-Alaska Bank, as alleged in the said amended complaint of plaintiff herein, or otherwise.

For a further, second separate affirmative answer and by way of defense, these answering defendants allege as follows, to wit:

That these answering defendants do not admit any liability for any act or thing charged against them in plaintiff's said amended complaint, but allege that, during the whole time that these answering defendants were directors of said bank, said E. T. Barnette was likewise a director and was the president of said bank.

That subsequent to the closing of said bank and prior to the institution of this action, said E. T. Barnette and Isabelle Barnette, his wife, for the purpose



of settling any liability of said E. T. Barnette and these answering defendants by reason of, or under or by virtue of any acts or things done or performed by said E. T. Barnette or the board of directors of said bank, or by these answering defendants during the time that they were directors of said bank, executed and delivered to the receivers of said bank a deed to certain income-producing properties situate in the town of Fairbanks, Alaska, and on the creeks adjacent thereto in the Fairbanks Precinct, and paid to them certain moneys from the sale of said properties [147] in the town of Fairbanks, and said receivers have, since said time, been paid as rents and the royalties from said properties the sum of more than thirty thousand dollars, as defendants are informed and believe and so allege, which said sum was paid by said E. T. Barnette for the purpose of settling the alleged liability of these answering defendants and his codirectors by reason of any acts or things done or alleged in plaintiff's said amended complaint to have been wrongfully done by them during the time they were directors of said bank.

That answering defendant, John A. Jesson, alleges that the liability for any of the alleged acts as set forth in said amended complaint as having been done and performed by the directors of said bank during the time he was a director thereof does not exceed the sum of thirty thousand dollars and the sum so paid by E. T. Barnette and Isabelle Barnette, as hereinbefore set forth, was paid, as said defendant is informed and believes, and so alleges, for the purpose of discharging and settling in full any and all lia-

bility, against this defendant if any exists.

That answering defendant E. R. Peoples alleges that the liability for any of the alleged acts as set forth in said amended complaint as having been done and performed by the directors of said bank during the time he was a director thereof does not exceed the sum of thirty thousand dollars and the sum so paid by E. T. Barnette and Isabelle Barnette, as hereinbefore set forth, was paid, as said defendant is informed and believes and so alleges, for the purpose of discharging and settling in full any and all liability against this defendant, if any exists.

That answering defendant James W. Hill, alleges that the liability for any of the alleged acts as set forth in said amended complaint as having been done and performed by the directors of said bank during the time he was a director thereof does not exceed the sum of thirty thousand dollars, and the sum so paid by E. T. Barnette and Isabelle Barnette, as hereinbefore set forth was paid, as said defendant is informed and believes and so alleges, for the purpose of [148] discharging and settling in full any and all liability, against this defendant, if any exists.

That answering defendant Raymond Brumbaugh alleges that the liability for any of the alleged acts as set forth in said amended complaint as having been done and performed by the directors of said bank during the time he was a director thereof does not exceed the sum of thirty thousand dollars, and the sum so paid by E. T. Barnette and Isabelle Barnette, as hereinbefore set forth, was paid, as said defendant is informed and believes and so alleges,

for the purpose of discharging and settling in full any and all liability, against this defendant, if any exists.

That answering defendant John A. Clark alleges that the liability for any of the alleged acts as set forth in said amended complaint as having been done and performed by the directors of said bank during the time he was a director thereof does not exceed the sum of thirty thousand dollars, and the sum so paid by R. T. Barnette and Isabelle Barnette, as hereinbefore set forth, was *said* as said defendant is informed and believes and so alleges, for the purpose of discharging and settling in full any and all liability, against this defendant, if any exists.

That answering defendant George Preston alleges that the liability for any of the alleged acts as set forth in said amended complaint as having been done and performed by the directors of said bank during the time he was a director thereof does not exceed the sum of thirty thousand dollars, and the sum so paid by E. T. Barnette and Isabelle Barnette, as hereinbefore set forth, was paid, as said defendant is informed and believes and so alleges, for the purpose of discharging and settling in full any and all liability, against this defendant, if any exists.

That by reason of the payment in full of all sums with which these answering defendants could be charged, as set forth in plaintiff's said amended complaint herein, these defendants are discharged from any and all liability and any and all damage occasioned to said bank by reason of any of the alleged wrongful acts and things [149] done and per-

formed by these defendants while a director, and said liability, if any exists, has been paid and settled in *doll* by said E. T. Barnette, who is jointly responsible therefor.

WHEREFORE these answering defendants pray that the plaintiff take nothing by his amended complaint, and that they have judgment for their costs incurred herein.

McGOWAN & CLARK,  
Attorneys for said Defendants.

A. R. HEILIG,  
Of Counsel for E. R. Peoples.

United States of America,  
Territory of Alaska,—ss.

John A. Clark, George Preston, and E. R. Peoples, being first duly sworn, on oath depose and say, each for himself and not one for the other. I am one of the defendants making the foregoing amended answer, and make this verification in behalf of myself and my codefendants; that I have read same, know the contents thereof, and the statements therein made are true, as I verily believe.

JOHN A. CLARK.  
GEO. PRESTON.  
E. R. PEOPLES.

Subscribed and sworn to before me this April 21, 1914.

[Seal] ESTELLE FITTS,  
Notary Public in and for the Territory of Alaska.  
My commission expires Dec. 23, 1917.

Due service of the within amended answer and



receipt of a copy thereof are hereby acknowledged this 21st day of April, 1914.

O. L. RIDER,  
Attorney for Plaintiff.

[Endorsed]: No. 1756. In the United States District Court, Territory of Alaska, Fourth Division. F. G. Noyes, Receiver, etc., Plaintiff, vs. John A. Jesson, et al., Defendants. Amended Answer of Defendants John A. Jesson, Raymond Brumbaugh, E. R. Peoples, James W. Hill, John A. Clark, and Geo. Preston.

Filed in the District Court, Territory of Alaska, 4th Div. Apr. 21, 1914. Angus McBride, Clerk. By P. R. Wagner, Deputy. [150]

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[Title of Court and Cause.]

**Reply to Amended Answer of Defendants John A. Jesson, Raymond Brumbaugh, E. R. Peoples, James W. Hill, John A. Clark, and George Preston.**

First.

Comes now, the plaintiff and for reply to the amended answer of the above-named defendants says that he denies each and every allegation and statement of new matter therein contained except those hereinafter specifically admitted.

Second.

For reply to the first and separate answer of defendants, he denies each and every allegation therein contained, except those hereinafter expressly admitted or otherwise denied.

He admits that E. T. Barnette was a member of the board of directors and president of the Fairbanks Banking Company, a corporation, as stated, and that he was thoroughly conversant with the affairs of said bank.

He admits that the capital stock of the Gold Bar Lumber Company was carried on the books of said corporation at \$341,949.00 and that the same was one of the principal assets of said bank; that the same was originally purchased by the Fairbanks Banking Company, a copartnership consisting of E. T. Barnette, James W. Hill and R. C. Wood. As to whether or not the said Barnette was at all times familiar with the affairs of the said Gold Bar Lumber Company, a corporation, and with the value of its properties, and the extent and variety of its assets, the amount of its liabilities, and knew the value of its stock, this plaintiff has neither knowledge nor information sufficient to form a belief. [151]

He admits that the said Barnette was actively engaged in mining in the Fairbanks Precinct during the time he was a director and president of the Fairbanks Banking Company, a corporation, and was familiar with the financial standing and moral responsibility of the majority of the men who were carrying on mining operations or engaged in said Fairbanks district, but as to whether or not he passed on and gave his judgment on most of the loans that were made during the time he was president of said bank, while in the Territory of Alaska, this plaintiff has neither knowledge nor information sufficient to form a belief.

Admits that with the exception of two other directors, the said Barnette is the only director who was director from the time of the organization of said bank until its close, and that he was recognized by the public at large as a man of wealth, and that a great deal of the business of said bank was acquired by reason of personal friendship between depositors and other persons doing business with said bank and the said Barnette. As to whether or not the said Barnette alone of all the directors had personally visited the properties of the said Gold Bar Lumber Company and had first hand knowledge of their value and condition, this plaintiff has neither knowledge nor information sufficient to form a belief.

Admits that none of the other directors of said bank received a salary as directors, and alleges that said Barnette received no salary as director. Admits that said other directors were engaged in other lines of business, and alleges that the said Barnette was also. As to whether or not the said Barnette was the only one in position to devote any considerable portion of his time to the affairs of said bank, this plaintiff has neither knowledge nor information sufficient to form a belief.

He admits that said Barnette had an office in said bank, and that the officers and employees of said bank were subject to receive orders from him within the limits prescribed by the by-laws of said bank, and that the books, records, loans, notes and discounts of said bank were readily accessible to him, and [152] that the affairs of said bank were thoroughly understood by him. He alleges that said books, records,

loans, notes and discounts were also readily accessible to any other officers of *director* of said bank.

He admits that the said Barnette was not in the Territory of Alaska at the time of the suspension of said bank, and that in the month of February, 1911, and after he had been advised that said bank had suspended and receivers appointed therefore, he returned to Fairbanks. *At* to any negotiations between the said Barnette and the then receivers of said bank, or the purpose thereof, or as to any proposition made by said Barnette to said receivers, or as to any promise or agreements made by the said Barnette to said receivers, other than as the same are evidenced by the deeds of trust referred to in said first separate and affirmative answer, this plaintiff has neither knowledge nor information sufficient to form a belief.

He admits that the execution by said Barnette and the delivery to said former receivers of said bank of the deed of trust to property situate in the Republic of Mexico and set out in said first separate and affirmative answer of said defendants for the purposes specified in said deed of trust and admits that the plaintiff has a copy of the same.

He admits the execution by said Barnette and wife, and the delivery to said receivers of a certain deed of trust to the real property therein described situate in Fairbanks Precinct, Alaska, upon the terms and conditions and for the uses and purposes set forth in said deed of trust.

He admits that the said Isabelle Barnette was never a director of said bank and in no way liable for any of its said indebtedness. As to the reason why



she joined her husband in said deed of trust and in said petition to the Court, this plaintiff has neither knowledge nor information sufficient to form a belief.

This plaintiff alleges that said deeds of trust are in writing and express for themselves the terms and conditions thereof, [153] the uses and purposes for which they are executed and delivered, and the admissions, agreements and assumed obligations of the said Barnette and his said wife, and this plaintiff has no knowledge nor information concerning such matters beyond the express terms of said deeds.

He admits that the Judge of the District Court for the Fourth Judicial Division of Alaska at that time, referred the application of the said Barnette and wife for the acceptance of said deeds of trust to the then receivers for their consideration.

He admits that thereafter said Judge in writing authorized said receivers to receive said deeds and enter into possession of the properties situate in Fairbanks Precinct.

As to whether or not the attorneys for the then receivers had prepared a complaint against said Barnette and the other directors of said bank at the time the proposition of the said Barnette and wife was made, charging the alleged wrongful acts contained in plaintiff's complaint on the grounds and for the purposes set forth in said answer, and were about to file the same with the Court and serve said defendants, this plaintiff has neither knowledge nor information sufficient to form a belief.

He admits that the said former receivers entered into the possession of the real property in the Fair-

banks Precinct and proceeded to collect the rentals and royalties therefrom, and that there has been received by said receivers and their successors in office, this plaintiff, from the rentals and royalties on said property a large sum of money, the gross *amount is* upwards of \$30,000.00 as stated, which he is holding subject to the terms and conditions of said trust deed.

This plaintiff further admits that in the deed of the said Barnette and wife to the property in said Fairbanks District, it is provided that any of said property could be sold at any time on the agreement of the said Barnette and wife and said receivers, and he admits that certain property covered by said transfer has been sold by the receiver and said Barnette and wife under [154] and by virtue of the terms of said agreement and that the money realized from said sale has been delivered to said receiver. Plaintiff alleges that said money so received *amount* to \$2500.00 which he is holding subject to the terms and conditions of said trust deed.

He admits that the property conveyed by the said Barnette and wife in said Fairbanks Precinct consists of improved and income producing properties, the last of which is situate in the business section of Fairbanks, Alaska, and he alleges that the rentals therefrom aggregate approximately \$450.00 per month at this time.

He admits that the said trust deed has been partially executed to the extent above set forth, but as to what the attitude of the said Barnette will be in the matter of the indebtedness of said corporation in

the event sufficient money has not been realized on the assets of said corporation before November 18th, 1914, to pay all of the indebtedness of said corporation, or what his attitude will be in the matter of a sale of said property or so much thereof as may be necessary in satisfaction of all outstanding indebtedness and liabilities of said bank together with interest thereon as alleged, this plaintiff has neither knowledge nor information sufficient to form a belief.

He admits that at the time of the execution and delivery of said trust deeds there was other indebtedness of said bank than the indebtedness due to depositors and holders of unpaid drafts, among which was the claim of Dexter Horton National Bank for a sum in excess of \$120,000.00 as alleged, to secure which, the said Dexter Horton National Bank claimed a lien upon the stock of the Gold Bar Lumber Company belonging to said bank and which was then in the possession of the said Dexter Horton National Bank; but as to whether or not said stock was recognized by the then receivers and the attorneys for said receivers and the Court, as being of a value greater than sufficient to pay said claim [155] of said Dexter Horton National Bank, and that if said stock was sold under foreclosure of the pledge claimed thereon it would pay the indebtedness of the said Dexter Horton National Bank, and for that reason no reference to indebtedness was made in said trust deeds other than the indebtedness due to depositors and holders of unpaid drafts, this plaintiff has neither knowledge nor information

sufficient to form a belief.

He alleges that since said time the said Dexter Horton National Bank has instituted a suit for the foreclosure of the pledge claimed by it on said stock and has recovered a judgment establishing said lien and ordering sale of said stock in satisfaction of the same; that said sale under said judgment has been had and said stock bid in thereat by said Dexter Horton National Bank for \$100,000.00, and unless the same is reversed or set aside on appeal said judgment and sale will become final.

As to whether or not the former receivers, after the delivery of said trust deeds, abandoned all idea of instituting a suit against said Barnette or any other director of said bank, this plaintiff has neither knowledge nor information sufficient to form a belief. He admits that no suit was instituted by them, as stated, and that no suit was instituted against said directors until after the appointment of the present receiver, this plaintiff. He alleges that in the institution and prosecution of this suit he is acting under order of Court; he admits that the said Barnette was not joined as a part defendant in this action, and he alleges that the reason therefor is that the acceptance of said trust deeds operated as an agreement not to sue said Barnette prior to November 18th, 1914.

He admits that since the institution of this suit the said Barnette has been within the jurisdiction of this Court as stated and could have been served with process, but he alleges that he was not served in this suit for the reason that he was not a party thereto. [156]



## Third.

For reply to the second separate affirmative answer of the above named defendants, plaintiff prays that he denies each and every statement and allegation therein contained, except as hereinafter admitted.

He admits that during the whole time said defendants were directors of said bank, the said E. T. Barnette was likewise a director and was President of said bank;

He admits that subsequent to the closing of said bank and prior to the institution of this action the said E. T. Barnette and Isabelle Barnette, his wife, executed and delivered to the receivers of said bank a deed to *a* certain income producing properties situate in the town of Fairbanks, Alaska, and that said receivers have received certain moneys from the sale of certain of said properties in the town of Fairbanks, Alaska, which amount this plaintiff alleges to be \$2,500.00.

Plaintiff further admits that said receivers since said date have received the rent from said properties but he alleges that the gross income thereof up to April 1st, 1914, does not exceed \$20,606, out of which he has paid up to April 1st, 1914, expense incident to the care of said properties, approximately, \$1,457.32.

This plaintiff further alleges that said deed of trust is in writing and expresses for itself the terms and conditions thereof, the uses and purposes for which it was executed and delivered, and the admissions, agreement and assumed obligations of the said

E. T. Barnette and his said wife, and this plaintiff has no knowledge nor information concerning such matters beyond the expressed terms of said deed.

O. L. RIDER,

Attorney for Plaintiff.

United States of America,  
Territory of Alaska,—ss.

F. G. Noyes, being first duly sworn, deposes and says: I am the plaintiff named in the foregoing reply; I have read said reply, know the contents thereof, and believe the same to be true.

F. G. NOYES.

Subscribed and sworn to before me this 22d day of April, 1914. [157]

[Seal]

L. D. BENNETT,

Notary Public in and for the Territory of Alaska.

My commission expires June 24, 1916.

Service of copy accepted this 22nd day of April, 1914.

McGOWAN & CLARK,

Attorney for Defendants.

[Endorsed]: No. 1756. In the District Court for the Territory of Alaska, Fourth Division. F. G. Noyes, Receiver of the Washington-Alaska Bank, a Corporation, Plaintiff, vs. J. A. Jesson, et al., Defendants. Reply to amended answer of defendants John A. Jesson, Raymond Brumbaugh, E. R. Peoples, James W. Hill, John A. Clark and George Preston.

Filed in the District Court, Territory of Alaska, 4th Div., Apr. 22, 1914. Angus McBride, Clerk. By P. R. Wagner, Deputy. [158]

[Title of Court and Cause.]

**Findings of Fact and Conclusions of Law.**

BE IT REMEMBERED that on the 22d day of April, A. D. 1914, the above-entitled cause came on for trial before the Court without a jury upon the issues as joined between the plaintiff and *and* defendants, the Honorable F. E. FULLER, Judge of said Court, presiding; the plaintiff appearing in person and by his attorney, O. L. Rider; the defendants appearing in person and by their attorneys John L. McGinn, John A. Clark and A. R. Heilig, and thereupon the respective parties plaintiff and defendants, from day to day, introduced their testimony in support of said issues until the 6th day of May, 1914, when all parties rested and the introduction of said testimony was closed.

And thereupon the Court, after hearing the allegations, testimony and proofs of the respective parties, and the arguments of counsel, and being fully advised in the premises, does hereby make and file, as constituting its decision in said cause, the following Findings of Fact and Conclusions of Law.

I.

That the Washington-Alaska Bank, of which the plaintiff is receiver, was incorporated under the laws of the State of Nevada on the 21 day of January 1908, with the authorized capital stock of \$300,000.00 divided into 3,000 shares of the par value of \$100.00 each; that said bank was incorporated under the name of the Fairbanks Banking Company; and that subsequently, by amendment to its Articles

of Incorporation, said name was changed to Washington-Alaska Bank. [159]

## II.

That said bank commenced business in the town of Fairbanks, Alaska, on the 16 day of March, 1908, with a subscribed capital of \$206,000.00, part of which was paid for in cash, part in property, and the balance by the promissory notes of the subscribers.

## III.

That prior to the 21 day of January, 1908, subscriptions for said capital stock were circulated, and the following persons, among others, subscribed for shares thereof, to wit: E. T. Barnette, 440 shares, R. C. Wood, 220 shares, James W. Hill, 220 shares; the name of R. C. Wood being subscribed thereto by said E. T. Barnette.

## IV.

That prior to the incorporation of said bank, the said Barnette, Hill and Wood as copartners were conducting a banking business in said town of Fairbanks under the firm name and style of Fairbanks Banking Company, which said company in December, 1907, owing to financial difficulties, was unable to meet its obligations and was compelled to suspend business and close its doors, and was, at the time of the organization of said corporation, in the hands of trustees.

## V.

That said corporation was organized, among other things, for the purpose of taking over the business and affairs of said partnership and assuming its outstanding obligations.



## VI.

That the capital of said partnership was \$200,000.00 which belonged to said Barnette, and the agreement existing between said partners was that the profits of said partnership were to be divided, one-half to said Barnette, and one-fourth each to said Hill and Wood.

## VII.

That thereafter, and in the fore part of January, 1908, a large number of business, professional and mining men of the Fairbanks Recording District, Alaska, met in the Town of Fairbanks, [160] Alaska, for the purpose of organizing a corporation to purchase and take over and absorb the business of the Fairbanks Banking Company, a partnership, and at said meeting negotiations were begun by said proposed incorporators with said copartnership for the purchase of the same. That at said meeting a committee was appointed to go into the details of the reorganization of the Fairbanks Banking Company, and to report a basis upon which the business should be taken over, two of the members of this committee having been members of the committee of depositors which had in December examined the assets.

## VIII.

That said committee met on the 5th day of January, 1908, and, after investigating the affairs of the bank, made the following report to be presented for the consideration of the proposed new corporation.

(a) That the issued stock for the proposed new corporation be as of date February 15, 1908; that

notes be taken for all deferred payments; that the same bear interest at the rate of one per cent per month from February 15, 1908, until paid; that twenty-five per centum of the unpaid for stock be due and payable on or before June 1st, 1908, and that the balance be due and payable on or before July 1st, 1908.

(b) That Captain E. T. Barnette and James W. Hill, with such associates as they may require, prepare a subscription list.

(c) That the amounts subscribed by any person be left to that person, and in case of over-subscription should be reduced proportionately.

(d) That the notes, properties, and securities of the Fairbanks Banking Company, the old institution, examined by its present acting board of trustees and on which a valuation of \$288,000.00 in excess of its liabilities was placed, be accepted. [161]

(e) That all notes, properties and securities which said board of trustees placed in the No. 3 or doubtful class remain the property of the old institution.

(f) That all interest on existing loans as of December 19, 1907, be computed to February 15, 1908, and that the amount of such accrued interest be placed to the credit of the old institution on the books of the new corporation, and that the same be payable on or before December 31, 1908.

(g) That should James W. Hill and R. C. Wood not take the full forty-four thousand dollars in stock in the new corporation, the balance of the amount

not so taken to be paid to them not later than July 1st, 1908.

(h) That the proposition of Captain E. T. Barnette to leave on deposit with the new corporation the sum of two hundred thousand dollars, without interest for one year be accepted, and that it be the understanding that such deposit will secure said new corporation against any adverse decision of the Court in the Caustens vs. Barnette suit in so far as such decision may decrease the value of the Gold Bar Lumber Company property as accepted by the present board of trustees.

(i) That the officers of the new corporation be a president, vice-president, second vice-president, cashier, assistant cashier, treasurer, and secretary.

(j) That the number of the board of directors be twelve, four to be elected for six months, four for twelve months, and four for eighteen months or until their respective successors are duly elected and qualified.

(k) That dividends be declared semi-annually on June 30, and December 31.

#### IX.

That said report was, on January 6th, 1908, submitted to said proposed incorporators, and at said meeting the said report was read, and passed on section by section as read, and on motion duly made and carried was adopted and ordered kept as a part of [162] the records of said meeting.

#### X.

That at said meeting a subscription list, a copy of which is set forth in paragraph 3 of the amended

complaint in this cause, was presented and signed by said proposed incorporators, setting forth the amount for which each respectively subscribed.

### XI.

That at said meeting it was also agreed on behalf of the Fairbanks Banking Company, a copartnership, that said partnership would turn over to said corporation the property of said Fairbanks Banking Company, a partnership, on the terms specified in said report, and said proposed incorporators in behalf of said proposed corporation, in consideration thereof, agreed to assume the liabilities of said partnership.

### XII.

That said Fairbanks Banking Company, a corporation became such on the 21st day of January, 1908. That on the 8th day of February, 1908, a meeting of the subscribers of the capital stock of the Fairbanks Banking Company was held for the purpose, among others, of obtaining notes of the subscribers for the stock subscribed by them, and, at said meeting, said stock notes were subscribed by said subscribers of stock and delivered to said corporation.

That at the time of said meeting the Articles of Incorporation of said Fairbanks Banking Company had not been received from the State of Nevada, and for the purpose of expediency it was deemed advisable to elect a board of directors, and twelve directors were elected at said meeting, and it was agreed that said board of directors should act as such until the arrival of the Articles of Incorporation, when a



formal meeting would be held and proper by-laws be adopted. [163]

### XIII.

That said Articles of Incorporation did not arrive in Fairbanks until sometime in the month of March, 1908, and immediately thereafter a meeting of the stockholders of the Fairbanks Banking Company, a corporation, was called, and at said meeting said stockholders, among other things, adopted by-laws and elected a board of directors, and also passed a resolution to the effect that the matter of taking over the property of the Fairbanks Banking Company, a partnership, be left to the board of directors.

That on the 12th day of March, 1908, at said meeting of the subscribers to said capital stock, said subscriptions were accepted by them and the above named Barnette, Hill and Wood, together with the other subscribers, were declared to be stockholders of the said corporation. The defendant Wood was not present at said meeting, but he was notified of the result of the same by the defendant Hill.

### XIV.

Subsequently, at a meeting of the stockholders of said corporation it was resolved that the matter of taking over the business and affairs of said partnership be left to the board of directors. Thereafter, on March 12, 1908, at a meeting of the board of directors, said matter was considered by them and the resolutions of the proposed stockholders, set out in Finding VIII hereof, were by said directors adopted and approved, except that the resolution providing for the payment of accrued interest up to

February 15, 1908, was by them amended so as to read "March 15, 1908." At the same meeting it was ordered by said board of directors that stock issue to said Barnette, Hill and Wood in exchange for the property received from them by said corporation as follows: Barnette 440 shares; Hill 220 shares; Wood 220 shares.

XV.

That on the 16th day of March, 1908, a written agreement was entered into between said corporation and said partners, and on the [164] same day the same was signed by the said Barnette and Hill, and also on behalf of said bank by its president and secretary, wherein the valuation of the resources of said partnership was fixed at \$790,940.31 and its liabilities at \$538,940.31, leaving an excess of \$252,000.00 belonging to the said Barnette, Hill and Wood, in which said agreement the said Barnette, Hill and Wood agreed to accept stock of the corporation at its par value for the amount of assets in excess of said liabilities, except that \$200,000 thereof should be placed to the credit of the said Barnette as a special deposit with said corporation upon the terms therein stated. By the terms of said agreement the amount of stock to be issued to Barnette, Hill and Wood was fixed at \$52,000.00 instead of \$88,000.00 as contemplated by said resolution and subscription, thus entitling Barnette to 260 shares and Wood and Hill each to 130 shares, a copy of said agreement is annexed to plaintiff's complaint and marked Exhibit One.

## XVI.

That at the time said agreement was entered into, the said Barnette was president of the said corporation and also a member of the board of directors, the said Hill was a member of its executive committee and also its vice-president, and the said Wood was its cashier, and the said defendant John A. Jesson was a member of its board of directors. That the above-named Wood, Hill and Jesson are all of the officers of the said bank at the time said agreement was entered into upon whom service has been made in this case, and who are now before the Court as defendants.

## XVII.

That the matter of preparing the papers for the transfer of said property belonging to said partnership to said corporation was, by the board of directors, left to the executive committee, and the said executive committee examined the affairs of said partnership, and, under their direction, said written agreement was prepared and afterwards submitted to the board of directors [165] for approval, and by them approved.

## XVIII.

That according to the by-laws of said corporation, the said executive committee had the same powers as the board of directors, subject to approval of their acts by said board of directors.

## XIX.

That at the time said written agreement was signed and executed, and during all of the negotiations leading up to the making of the same, the defendant

Wood was in Seattle, Washington, but he was advised fully concerning the same by the defendant Hill by letter and by telegram.

## XX.

That prior to the return of said Wood to Fairbanks, to wit: on the 29th day of February, 1908, he offered to sell his stock in said corporation and to take in payment therefor part cash and a note for the balance, to be secured by said stock as collateral security.

## XXI.

That the defendant Wood returned to Fairbanks some time in the month of April, 1908, and, upon his return, he signed said written agreement so entered into as aforesaid, knowing that the same contained said clause requiring him to take stock for his shares of the assets of said partnership so transferred to said *to said* corporation in excess of the liabilities thereof as aforesaid, and also knowing that the same did not provide for the payment of said accrued interest.

## XXII.

That of loans and discounts transferred by said partnership to said corporation a large amount were then past due, or which then past due paper the sum of \$69,908.94 now remains in the hands of the receiver unpaid and uncollectable, which said loans and discounts were accepted by the directors of said corporation at their face value, and the same were included in those on which the accrued interest referred to in said resolution was afterward computed  
[166]



## XXIII.

That of said notes so past due as aforesaid, there were two executed by the Tanana Electric Company in the sum of \$27,997.38 which depended for their value upon the existence of an alleged guaranty of the Scandinavian-American Bank to make advancements sufficient to cover the same; that said alleged guaranty never had any existence in fact, and the claim therefor had been repudiated by said Scandinavian-American Bank prior to the time said note was accepted by said board of directors, and said repudiation was known to the members of said board. That said notes are still unpaid, and the same was at all times carried on the books of the said Washington-Alaska Bank, formerly Fairbanks Banking Company, as an asset in the sum of \$27,997.38.

## XXIV.

That said board of directors and the officers of said bank accepted said notes of the Tanana Electric Company and paid therefor the sum of \$27,997.38 with knowledge on the part of each of them that the same depended for their value upon said alleged guaranty alone.

## XXV.

That among the other assets of said partnership so accepted by said officers and directors was four-fifths of the capital stock of the Gold Bar Lumber Company, a corporation existing in the State of Washington, which said stock was accepted and paid for at the valuation of \$341,949.00, and said stock was at all times during the existence of said corporation carried as an asset in said sum.

## XXVI.

That at the first meeting of the board of directors, held on the 12th day of March, 1908, the defendant Wood was elected cashier of said bank, at which time he was then in the said City of Seattle, Washington, as aforesaid, immediate notice was given to him of said election.

## XXVII.

That the said Wood accepted said office of cashier while in [167] the said City of Seattle, and, the *the* 16th day of March, 1908, entered upon the discharge of his duties as such cashier, and, upon his return to said Fairbanks in April, 1908, as aforesaid, entered actively upon such duties and continued to so act until June 29, 1908, when he tendered his resignation as such cashier, and the same was accepted by the board of directors to be effective at the close of business in June 30, 1908, and one B. R. Dusenbury, who was then assistant cashier, was elected to succeed Wood as cashier.

## XXVIII.

That at the time said Wood tendered his resignation as cashier as aforesaid, he demanded that there be paid to him the amount of his interest in said partnership assets, to wit, \$13,000.

## XXIX.

That a certificate for 130 shares of the capital stock of said corporation had been written up in the name of the defendant Wood, of the par value of \$13,000, but that the same was never detached from the stock-book. That said 130 shares were carried on the books of said bank as outstanding stock from March

16, 1908, to June 30, 1908.

XXX.

That on the 30th day of June, 1908, with the knowledge, consent and approval of the officers and directors of said bank, a certificate of deposit was issued to and accepted by the said Wood in the sum of \$13,000, in lieu of said stock, which said certificate was signed by the said B. R. Dusenbury as assistant cashier prior to when the said resignation of the said Wood as cashier became effective, and said shares of capital stock were on the same day charged to treasury stock on the books of said bank.

XXXI.

That subsequently the said Wood drew out in cash from the funds of said bank the amount of the said certificate of deposit, to wit, \$13,000. [168]

XXXII.

That at the time the said certificate of deposit was issued to said Wood there was in effect a resolution of the said board of directors requiring monthly statements, showing the condition of said bank, to be presented to said board of directors; and that, in accordance with said resolution, there was, during the existence of said bank, presented to said board of directors at each monthly meeting thereafter a statement showing the condition of said bank, and said statements were examined in detail by said board and by them ordered filed.

XXXIII.

That there was submitted to said board of directors at its meeting on July 13, 1908, a written report in detail showing the condition of the affairs of said

bank, which said report was examined in detail and was ordered filed, and, under the question of this report, the question of refunding to those desirous of giving up their stock in the Fairbanks Banking Company was discussed, and it was the sense of the meeting that any stockholder desirous of giving up the stock, be paid for the same, and the stock returned to the treasury of said bank.

#### XXXIV.

That at the time the said certificate of deposit was issued to said Wood, and his shares of stock so charged to treasury stock as aforesaid, the following of the defendants now before the court in this action were among its officers, to wit, James W. Hill, a member of the executive committee and its vice-president, John A. Jesson, a member of the board of directors, R. C. Wood, cashier and a member of its executive committee; and, at said meeting of July 13, 1908, at the time said report was submitted and the sense of said meeting was expressed as aforesaid, the said John A. Jesson was present and participated therein as a member of the board of directors, and the said James W. Hill was also present as its vice-president and a member of the executive committee. [169]

#### XXXV.

That of the notes accepted from said partnership as aforesaid and paid for by said corporation, there were charged on December 31, 1907, by said partnership on the books of said partnership to an account known as "doubtful account" the sum of \$22,979.99 and said doubtful account, so including said



notes in said amount, was then depreciated on the said books to the amount of thirty-three and one-third per cent thereof, which said notes were accepted by said corporation and paid for by them in the amount aforesaid, to wit, \$22,979.99, all of which said notes were then past due, and of which there still remains unpaid and uncollectible the sum of \$12,860.61. That of said notes so charged to said doubtful account as aforesaid, there was on December 31, 1909, charged by said corporation to the account of profit and loss on the books of said corporation the sum of \$12,192.80.

#### XXXVI.

That on March 23, 1908, pursuant to said resolution of the said board of directors adopted on March 12, 1908, the accrued interest on said loans so transferred to said corporation was computed to March 15, 1908, in the sum of \$39,642.81, and one-half thereof was placed to the credit of said Barnette, and one-fourth thereof each to the credit of said Hill and Wood on the books of said corporation, and subsequently the same was paid to said Barnette, Hill and Wood in cash.

#### XXXVII.

That of said interest so paid to said Barnette, Hill and Wood as aforesaid, approximately \$7,500.00 thereof was never collected by said bank.

#### XXXVIII.

That at the time said resolution allowing said interest was adopted, and at the time the amount thereof as aforesaid was placed to the credit of said Barnette, Hill and Wood as aforesaid on the books

of the said bank, the following defendants now before the Court in this action were officers of said bank, to wit, John A. Jesson, member of the board of directors, James W. Hill, [170] member of the executive committee and vice-president, and R. C. Wood, cashier.

### XXXIX.

That at the time said corporation commenced business on March 16, 1908, it had a total subscribed and outstanding capital stock in the sum of \$206,000.00, only a small portion of which was paid for in cash, and at *not* time did the same exceed said amount; and that of its funds \$341,949.00 was at all times invested in stock of the Gold Bar Lumber Company, being \$135,949 in excess of its subscribed and outstanding stock.

### XL.

That at the time said investment was so made as aforesaid, said Lumber Company was closed down and immediately prior to closing down, it had been operated at a loss, that in so far as said lumber company was able to operate since the purchase of said stock by said corporation, all of its earnings and a part of its surplus have been expended in the purchase and repair of equipment for said mill, and in the operation of said mill its standing timber was being consumed and its best asset exhausted. That no dividends have *been* ever been paid on the capital stock of said lumber company during the time the same was owned by said bank.

### XLI.

That the Articles of Incorporation of said corpora-

tion authorized and empowered said corporation, among other things, to buy and sell gold and silver bullion, foreign coin, stocks, bonds, and all other property, real and personal, and to do any business and exercise any powers incident to the banking business, or necessary or proper to the furtherance and attainment of the purposes of said bank.

#### XLII.

That subdivisions 5 and 6 of Articles XII of the by-laws of said corporation, adopted at the stockholders meeting held March 12, 1908, provided that all issued and outstanding stock of the company that may be donated to, or purchased by, the company, or [171] which shall revert by reason of failure to pay for the same, shall be treasury stock, and shall be held subject to the disposal of the action of the board of directors. Said stock shall neither vote nor participate in dividends while held by the company. The board of directors shall be given the first option to purchase for the corporation the stock of any stockholder, and shall be entitled to purchase the same provided said board of directors shall offer to pay to said stockholder the same amount as he might obtain from any other person. .

#### XLIII.

That on the 14th day of September, 1908, the executive committee of the said Fairbanks Banking Company, consisting of Barnette, president, Hill, vice-president, Dusenbury, cashier, and directors Jonas, John Jesson and Ryan, passed a resolution to the effect that said corporation would not take over any more stock of the stockholders, which said

resolution of the executive committee was approved and ratified by the board of directors on October 14, 1908, the directors present at said meeting being: Hill, Peoples, Yarnell, Robinson, Ryan, Jonas, and Jesson, and also the said Dusenbury was present.

#### XLIV.

That after said bank took said stock of said Wood into its treasury, frequent and continuous surrenders of its stock were made by its stockholders, amounting in all to thirty-eight different and distinct transactions, aggregation a total of \$43,000 exclusive of said Wood's stock. That the stock so taken back by the corporation was charged to the treasury stock account, and of the same only ten shares of the par value of \$1,000 were ever reissued. That said stock surrenders continued down to and including October 25, 1910, when the last surrender was made, being the McGinn stock of the par value of \$10,000, for which the sum of \$6,000 in cash was paid by the bank to said McGinn. [172]

#### XLV.

That upon the 18th day of November, 1908, Strandberg Brothers were the owners of 100 shares of the outstanding capital stock of said Fairbanks Banking Company, Emma Strandberg was the owner of 10 shares, and B. E. Johnson was the owner of 10 shares.

That said stock was taken in part payment of a loan that the bank had theretofore made to said Strandberg Brothers and said Johnson, who were mining copartners, and the bank also received at said time the further sum of \$4,000 in cash, which



fully paid said loan. That said transaction amounted to the taking of stock for a pre-existing debt, rather than the purchase of stock by the board of directors. That said directors believed at said time that said loan was precarious; and said directors, in taking said stock in partial satisfaction of said loan, did so in good faith and believing it to be for the best interests of the corporation.

#### XLVI.

That on the 3d day of February, 1909, at a meeting of the executive committee of said bank, it was again resolved that the officers of said bank be directed to say that "the corporation did not desire to buy in its stock at present," which said resolution of the said executive committee was thereafter and on, to wit, the 13th day of February, 1909, approved and ratified by the said board of directors.

#### XLVII.

That on the 15th day of March, 1909, H. B. Parkin, who was the owner of 10 shares of the outstanding capital stock of said bank, and Oscar Tackstrom, who was the owner of 5 shares of the said outstanding capital stock, requested the executive committee of said bank to buy their stock.

That said executive committee thereupon again announced its policy, by resolving "It was the sense of the meeting that the bank observed the rule established at a previous meeting of the [173] board wherein it was declared not to buy in any more stock," which said resolution was approved and ratified by the board of directors, at said meeting held April 12, 1909, at which meeting of the directors the

following officers and directors were present: Barnette, Claypool, Hill, Jesson, Robinson, Yarnell, Brumbaugh, Peoples, and Dusenbury.

#### XLVIII.

That John L. McGinn was a stockholder of the Washington-Alaska Bank, formerly the Fairbanks Banking Company, and was the owner of 100 shares of the outstanding capital stock of said Washington-Alaska Bank, of the par value of \$10,000.

#### XLIX.

That a short time prior to the 13th day of October, 1910, John L. McGinn, as a stockholder of the Washington-Alaska Bank, formerly the Fairbanks Banking Company, demanded the right to inspect its books and papers, and threatened that unless this right was granted him immediately, to make application for an order permitting him to do so and for the appointment of a receiver of the said Washington-Alaska Bank. That the directors of the Washington-Alaska Bank, fearing that information obtained by such an investigation would be used by said McGinn in promoting the interests of the First National Bank in its business, and that if such information was refused and any litigation was started it would impair public confidence in the Washington-Alaska Bank and perhaps start a run of its customers and depositors on said bank, acting under this belief, authorized the cashier to loan a purchaser sufficient funds to pay for the stock of said McGinn; one of the directors stating at said time that he had a purchaser who would be willing to purchase said stock for the sum of \$6,000, but it would be necessary for him to

borrow money to complete said purchase; that, as the matter was urgent and the purchaser was not immediately available, the cashier purchased the stock in his own name and gave his note to the bank for the amount [174] thereof and paid to said John L. McGinn the sum of \$6,000.00 for his 100 shares of capital stock. That thereafter, and on or about the 25th day of October, 1910, said cashier, without the knowledge of any of the directors, cancelled his note and charged the amount thereof to the bank, and surrendered the stock to the bank, and the stock was thereafter held, with other treasury stock of the company.

L.

That upon said 13th day of October, 1910, the director George Preston, by reason of sickness of his family, was quarantined and unable to attend the meeting of the board of directors held on said day, and was not present thereat, and know nothing of the action taken at the meeting of said board.

LI.

That when stock was so taken back by the corporation, the amount paid therefor was either paid in cash, or notes held by the bank were cancelled and surrendered to the stockholders.

That said bank had no surplus of undivided profits against which the same could be charged.

LII.

That the taking back of said stock and the payment therefor as aforesaid was illegal, wrongful, and in violation of the laws of the State of Nevada under which said corporation was organized.

## LIII.

That after the surrender of the stock of the said Wood, to wit, from July 13, 1908, to and including September 12, 1908, stock was so taken up in the sum of \$13,400.00 during which time the defendant John A. Jesson was a member of the board of directors, and the defendant James W. Hill a member of its said executive committee;

That from September 13, 1908, to and including October 13, 1908, stock was so taken up in the sum of \$1500.00, during which time the defendants John A. Jesson and James W. Hill were members of the board of directors: [175]

That from October 14, 1908, to and including March 13, 1909, stock was so taken up in the sum of \$13,100.00, during which time the defendants Jesson, Hill and Peoples were members of the board of directors;

That from the 14 of March, 1909, to and including September 12, 1909, stock was so taken up in the sum of \$1000.00, during which time the defendants John A. Jesson, Hill and Brumbaugh were members of the board of directors;

That from September 13, 1909, to and including October 12, 1909, stock was so taken up in the sum of \$3000.00, during which time the defendants John A. Jesson, Hill and Brumbaugh and McGinn were members of the board of directors;

That from October 13, 1909, to and including January 18, 1910, stock was so taken up in the sum of \$1000.00, during which time the defendants John A. Jesson, Hill, McGinn and Brumbaugh and Wood



were members of the board of directors;

That from January 19, 1910, to and including October 25, 1910, stock was so taken up in the sum of \$10,000, for which the said sum of \$6,000.00 was paid in cash, and at the time said stock was so taken up the defendants John A. Jesson, Brumbaugh, Clark, Healey and Preston were members of its board of directors.

#### LIV.

That said stock surrenders so made as aforesaid were acquiesced in by said directors, and in some instances were made under their directors and with their express approval.

#### LV.

That in the month of May, 1909, said Fairbanks Banking Company and the Washington-Alaska Bank of Washington, then doing business at Fairbanks, each purchased one-half of the capital stock of the First National Bank of Fairbanks, Alaska, for which each paid the sum of \$62,500.00, and continued to own and hold said stock until the month of May, 1910.

That on or about the 4th of May, 1910, said Fairbanks Banking [176] Company sold the entire capital stock of the said First National Bank to the defendants Wood and McGinn for the sum of \$125,000.00 and received said amount in payment therefor, delivering to them the said capital stock of said First National Bank.

That at the time said banks purchased said stock of the First National Bank, they gave to said Wood an option to purchase the same on or before June 1,

1910, for the sum of \$125,000.00, and said sale to said Wood and McGinn was made in pursuance to said option.

That neither the said Fairbanks Banking Company, nor the said Washington-Alaska Bank of Washington, received any dividend on said stock of the said First National Bank during the time the same was held and owned by them, nor did they, or either of them, receive any interest from the said Wood and McGinn, or from anyone in their behalf, for the money invested in said stock during the time the same was so invested.

#### LVI.

That on September 14, 1909, the said Fairbanks Banking Company purchased the entire capital stock of the said Washington-Alaska Bank of Washington, paying therefor the sum of \$250,000.00, which said capital stock at said time was of the par value of \$150,000.

#### LVII.

That at the time the said capital stock of said Washington-Alaska Bank of Washington was so purchased the defendants J. A. Jesson, James W. Hill and John L. McGinn were members of the board of directors of the Fairbanks Banking Company; and said purchase of said capital stock was ratified and confirmed by them as members of said board on the said 14 day of September, 1909.

#### LVIII.

That at the time the aforesaid resolution was adopted by the said board of directors to take over the business and affairs of said partnership; and at

the time said written agreement between said corporation and said partners was entered into and confirmed and approved; and at the time said valuation was placed on said [177] capital stock of the said Gold Bar Lumber Company and said stock accepted at such valuation; and at the time said past due notes held by said partners were accepted and paid for by said corporation, including said notes of the said Tanana Electric Company and said notes which had been charged to the doubtful account of said partnership as aforesaid; and at the time said accrued interest on said notes so purchased of said partnership was computed and allowed to said partners and placed to their credit as aforesaid on the books of said corporation, the following defendants now before the Court in this action were officers and directors of said corporation and acquiesced in said transactions and gave their consent thereto with full knowledge on the part of each of them of the existence of the facts heretofore found respecting said transactions, to wit: James W. Hill, vice-president and member of its executive committee; John A. Jesson, member of its board of directors; R. C. Wood, its cashier. That the said Hill and Wood were also members of the partnership with which said corporation contracted respecting said matters and were each personally interested therein adversely to said corporation.

## LIX.

That at the time of the said sale of the said capital stock of the said First National Bank to the said Wood and McGinn, the following defendants now

before this Court were officers and directors of the said Fairbanks Banking Company, and each consented to said sale on the terms thereof heretofore stated, to wit: J. A. Jesson, R. C. Wood, John L. McGinn and Ray Brumbaugh.

LX.

That on the 12 day of April, 1910, the said Fairbanks Banking Company, by its board of directors, declared a dividend of twenty per cent on its then outstanding capital stock of \$168,600, which dividend amounted to \$33,720.00, and which said sum was paid to the stockholders of said bank either in cash or by crediting the amount thereof upon notes owing by said stockholders to said bank. [178]

LXI.

That at the time said dividend was so declared and paid, the said Fairbanks Banking Company did not have any surplus or undivided profits out of which the same could be declared and paid.

LXII.

That said dividend was declared and paid in violation of the laws of the State of Nevada, and also in violation of the by-laws of the said Fairbanks Banking Company, and was wrongful and illegal.

LXIII.

That at the time said dividend was declared and paid, the defendants Wood, McGinn, Brumbaugh and John A. Jesson were members of the board of directors of the said Fairbanks Banking Company, and gave their consent thereto.

LXIV.

That on the 1st day of October, 1910, the said



Fairbanks Banking Company and the said Washington-Alaska Bank of Washington combined, at which time the said Fairbanks Banking Company took over the assets of the said Washington-Alaska Bank of Washington and assumed and agreed to pay its outstanding liabilities; and thereafter the said Washington-Alaska Bank of Washington ceased to exist or do business as a bank, and the Fairbanks Banking Company, by amendment to its Articles of Incorporation, changed its name to Washington-Alaska Bank of Nevada, and continued thereafter to transact business under said name at said Fairbanks, Alaska, until the appointment of the receiver therefor.

#### LXV.

That pursuant to the agreement heretofore referred to between the said Fairbanks Banking Company and the said partnership formerly existing between the said Barnette, Hill and Wood, the said sum of \$200,000.00 to be paid to said Barnette was placed to his credit on the books of said corporation as a special deposit, and subsequently the entire sum thereof was paid to said Barnette in cash and drawn out by him from the funds of said bank. [179]

#### LXVI.

That the assets of the said bank now in the hands of the receiver are insufficient to pay its liabilities and the amount of such liabilities is more than \$470,000.00 in excess of the value of said assets.

#### **Conclusions of Law.**

Upon the foregoing findings of fact, the Court finds as conclusions of law:

1. That the defendants Wood, McGinn, Brumbaugh and Jesson are jointly and severally liable to the sum of \$33,720.00, by reason of the declaration and payment of the dividend upon the capital stock of the Fairbanks Banking Company on April 12, 1910;

2. That the defendant Jesson is liable in the sum of \$13,400.00, by reason of the surrender of shares of capital stock of said company, made between July 13, 1908, and September 12, 1908;

3. That the defendants Jesson and Hill are jointly and severally liable in the sum of \$1500.00, for surrender of shares of capital stock of said company, made between September 13, 1908, and October 13, 1908;

4. That the defendants Jesson, Hill and Peoples, are jointly and severally liable in the sum of \$1100.00, for surrenders of shares of capital stock, made between October 14, 1908, and March 13, 1909;

5. That the defendants Jesson, Hill and Brumbaugh are jointly and severally liable in the sum of \$1000.00, for surrenders of shares of capital stock of said company, made between March 14, 1909, and September 12, 1909;

6. That defendants Jesson, Brumbaugh and McGinn are jointly and severally liable in the sum of \$3000.00, for surrenders of capital stock of said company, made between September 13, 1909, and October 12, 1909;

7. That defendants Jesson, McGinn and Brumbaugh [180] are jointly and severally liable in the sum of \$1000.00, for surrenders of capital stock made

between October 13, 1909, and January 18, 1910.

8. That the plaintiff is entitled to a decree and judgment against the above-named defendants for the recovery of the sums above mentioned, and that as to the other defendants in this suit this action should be dismissed.

Dated June 11, 1914.

F. E. FULLER,

Entered in Court Journal No. 12, page 944.

District Judge.

[Endorsed]: No. 1756. In the District Court for the District of Alaska, Fourth Judicial Division. *F. G. Noyes, Receiver, vs. J. A. Jesson et al.* Findings of Fact and Conclusions of Law.

Filed in the District Court, Territory of Alaska, 4th Div. Jun. 11, 1914. Angus McBride, Clerk. By P. R. Wagner, Deputy. [181]

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*In the District Court for the Territory of Alaska,  
Fourth Division.*

No. 1756.

F. G. NOYES, Receiver of the Washington-Alaska  
Bank, a Corporation,

Plaintiff,

vs.

J. A. JESSON et al.,

Defendants.

**Decree.**

BE IT REMEMBERED, that on the 22d day of April, A. D. 1914, the above-entitled cause came on

regularly for trial before the Court, without a jury, upon the issues as joined between the plaintiff and the defendants, J. A. Jesson, R. C. Wood, J. A. Healey, E. R. Peoples, John L. McGinn, Ray Brumbaugh, James W. Hill, John A. Clark, and George Preston. The Honorable F. E. Fuller, Judge of said court, presiding. The plaintiff appeared in person and by his attorney O. L. Rider, and the said defendants R. C. Wood, James W. Hill, E. R. Peoples, and John L. McGinn appearing by their attorneys A. R. Heilig and John L. McGinn, and the defendants J. A. Jesson, Ray Brumbaugh, J. A. Healey, John A. Clark, George Preston and E. R. Peoples appearing by their attorneys McGowan & Clark, and thereupon the respective parties, plaintiff and defendants, from day to day introduced their testimony in support of said issues until the 6th day of May, 1914, when all of said parties rested and introduction of said testimony was closed, and thereupon the Court, after hearing the arguments of counsel and after considering the pleadings and the testimony, and being fully advised in the premises, did, on the 11th day of June, 1914, make and file its findings of fact and conclusions of law upon said issues; and now, to wit, on this 15th day of June, 1914, the Court being fully advised in the premises, it is ordered, adjudged and decreed as follows, to wit:

1.

That the plaintiff have and recover of and from the defendants R. C. Wood, John L. McGinn, Ray Brumbaugh and J. A. Jesson, jointly and [182] severally the sum of \$33,720.00 by reason of the



declaration and payment on April 12th, 1910, of the dividend upon the capital stock of the Fairbanks Banking Company set up in the complaint;

II.

That the plaintiff have and recover of and from the defendant J. A. Jesson the further sum of \$13,400.00 by reason of the surrender of shares of the capital stock of said company made between July 13, 1908, and September 12, 1908;

III.

That the plaintiff have and recover of and from the defendants J. A. Jesson and James W. Hill, jointly and severally the further sum of \$1,500.00 by reason of the surrender of shares of the capital stock of said company made between September 13, 1908, and October 13, 1908;

IV.

That the plaintiff have and recover of and from the defendants J. A. Jesson, James W. Hill and E. R. Peoples, jointly and severally, the further sum of \$1,100.00 by reason of the surrender of shares of the capital stock of said company made between October 14, 1908, and March 13, 1909;

V.

That the plaintiff have and recover of and from the defendants J. A. Jesson, James W. Hill and Ray Brumbaugh, jointly and severally, the further sum of \$1,000.00 by reason of the surrender of shares of the capital stock of said company made between March 14, 1909, and September 12, 1909;

VI.

That the plaintiff have and recover of and from

the defendants, J. A. Jesson, Ray Brumbaugh and John L. McGinn, jointly and severally, the further sum of \$3,000.00 by reason of the surrender of shares of the capital stock of said company made between September 13, 1909, and October 12, 1909; [183]

#### VII.

That the plaintiff have and recover of and from the defendants J. A. Jesson, John L. McGinn and Ray Brumbaugh, jointly and severally, the further sum of \$1,000.00 by reason of the surrender of shares of the capital stock of said company made between October 13, 1909, and January 18, 1910.

#### VIII.

That the plaintiff take nothing as against the defendants J. A. Healey, John A. Clark and George Preston by reason of any of the matters and things set forth in the complaint herein and that this action be and the same is hereby dismissed as to said J. A. Healey, John A. Clark and George Preston.

#### IX.

That the plaintiff take nothing, further than as above specified, against the defendants R. C. Wood, E. R. Peoples, John L. McGinn, J. A. Jesson, Ray Brumbaugh and James W. Hill, by reason of any of the matters and things set forth in the complaint herein, and that this action be and the same is hereby dismissed as to them in respect to all matters and things set up in the complaint herein, except as to the declaration and payment of said dividend and the surrenders of the shares of the capital stock of said company as above specified:

All of which is now finally ORDERED, AD-

**JUDGED AND DECREED** at the cost of the defendants R. C. Wood, E. R. Peoples, John L. McGinn, J. A. Jesson, Ray Brumbaugh and James W. Hill.

Let execution issue for the enforcement of above judgment and decree against the defendants R. C. Wood, E. R. Peoples, John L. McGinn, J. A. Jesson, Ray Brumbaugh and James W. Hill.

Dated Fairbanks, Alaska, this 15th day of June, 1914.

**F. E. FULLER,**

Judge of the District Court, Territory of Alaska,  
Fourth Division.

Entered in Court Journal No. 12, page 958. [184]

[Endorsed]: No. 1756. In the District Court for the Territory of Alaska, Fourth Division. F. G. Noyes, Receiver of the Washington-Alaska Bank, Plaintiff, vs. J. A. Jesson et al., Defendants. Decree. Service of Copy Accepted this 15th day of June, 1914. McGowan & Clark, John L. McGinn, A. R. Heilig, Attorneys for Defendants. Filed in the District Court, Territory of Alaska, 4th Div. Jun. 15, 1914. Angus McBride, Clerk. By P. R. Wagner, Deputy. [185]

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[Title of Court and Cause.]

### **Bill of Exceptions.**

**BE IT REMEMBERED** that this action came on regularly for trial before the Court sitting without a jury, Honorable Frederick E. Fuller, Judge, presiding, at 10 o'clock A. M. on April 22, 1914, when O. L. Rider Esq. appeared as attorney for plaintiff, and

A. R. Heilig Esq, for defendant E. R. Peoples, John L. McGinn Esq for defendants R. C. Wood, James W. Hill, J. A. Jesson, John L. McGinn and Raymond Brumbaugh, and John A. Clark Esq for defendants J. A. Jesson, Raymond Brumbaugh, George Preston and John A. Clark, and the following proceedings were had and testimony was taken:—

**[Testimony of Sidney Stewart, for Plaintiff.]**

SIDNEY STEWART, a witness for plaintiff, after being duly sworn, testified as follows, to wit:

Direct Examination.

(By Mr. RIDER.)

Q. You may state your name.

A. Sidney Stewart.

Q. Where do you live? A. Fairbanks, Alaska.

Q. What is your occupation?

A. Clerk for receiver of Washington-Alaska Bank.

Q. How long have you been engaged as clerk for the receiver of the Washington-Alaska Bank?

[186] A. Since May 12, 1911.

Q. As clerk for the receiver, have you access to the books, records and files in the possession of the receiver? A. Yes, sir.

Q. Have you had experience, Mr. Stewart, as a bookkeeper? A. Yes, sir.

Q. What experience have you had as a bookkeeper?

Mr. McGINN.—We admit that he is a good, competent bookkeeper. [187]

Q. (Mr. STEWART.) I present you two pack-



(Testimony of Sidney Stewart.)

ages which are labeled "Nos. 311 and 312," and I ask you if you can identify them as a portion of the records and files of the receiver?

A. I can, yes, sir.

Mr. RIDER.—I wish to offer in evidence from the record found in file number 311 of the meeting of the board of directors had on the 12th day of March, 1908 at 10 o'clock P. M. the following (reads):

1. "The first meeting of the board of directors of the Fairbanks Banking Company was held at the office of McGinn & Sullivan in the town of Fairbanks, Territory of Alaska, on the 12th day of March, 1908, at ten o'clock P. M. immediately after adjournment of the stockholders meeting.

2. Present: E. T. Barnette, C. J. Robinson, D. H. Jonas, John P. Anderson, J. A. Jesson, M. H. McMullen, Chas. E. Claypool, Dan Ryan, Hans Stark, Dave Yarnell, John Flygar.

3. Each of the directors present took the oath of office and subscribed the written oath in the form presented at the meeting in conformity with the laws of the State of Nevada, and thereupon entered upon the discharge of their duties; which oath so signed by said board of directors was ordered filed.

4. Mr. E. T. Barnette was chosen temporary chairman and Mr. B. R. Dusenbury was chosen temporary secretary of the meeting.

5. The following gentlemen were unanimously elected officers of the company to serve until their successors are elected and qualified:

E. T. Barnette, President.

(Testimony of Sidney Stewart.)

J. W. Hill, First Vice-President.

R. C. Wood, Cashier. [188]

B. R. Dusenbury, Assistant Cashier, Secretary and Treasurer.

10. The adjourned meeting of the board of directors was held at the office of McGinn & Sullivan on the 13th day of March, 1908 at the hour of ten o'clock A. M. pursuant to adjournment of the previous night. All the directors were present except Robert Shepard. The meeting was called to order by the chairman.

11. It was then moved and seconded that an executive committee of three directors be elected. Messrs. Jonas, Stark and Claypool were unanimously elected members of the executive committee to act in conjunction with the president and first vice-president with all the powers given in the by-laws of the corporation. Carried.

12. It was then moved and seconded that the salaries of the various officers and employees of the corporation be now fixed for the ensuing six months. Carried.

13. It was moved by Mr. Jonas, seconded by Mr. Jesson that the salary of the president be \$500.00 per month. Carried. It was moved by Mr. Jonas, seconded by Mr. Robinson that the salary of the first vice-president and cashier be \$400.00 per month. Carried.

18. It was moved by Mr. Jonas, seconded by Mr. Robinson that the retainer of McGinn & Sullivan, attorneys be fixed at \$250.00 per month, and that said

(Testimony of Sidney Stewart.)

McGinn & Sullivan be permitted to charge a minimum fee of \$10.00 upon all mortgages, deeds of conveyance, bills of sales and other like instruments prepared by them; and that they be allowed compensation for typewriting for all other papers not included in the above list. Carried.

21. A general discussion was then had in regard to the value of the Gold Bar property situated in the State of Washington, and upon motion duly made and seconded it was: [189]

Resolved, that the board of directors obtain from Dexter Horton Company of Seattle, Washington, an estimate of the total value of the Gold Bar property. Carried.

22. It was moved by Mr. Robinson, seconded by Mr. Stark that the board of directors ratify the arrangement as to the taking over of the assets, property, business and liabilities of the Fairbanks Banking Company, a copartnership consisting of E. T. Barnette, J. W. Hill and R. C. Wood upon the terms and conditions as are set forth in the minutes of the meeting of the subscribers held January 5th, 1908, and which is as follows:

“That the notes, properties and securities of the Fairbanks Banking Company, the old institution, examined by the present acting board of trustees and on which a valuation of \$288,000.00 in excess of its total liabilities was placed, be accepted; and

That all notes, properties and securities which said board of trustees placed in the number 3, or doubtful,

(Testimony of Sidney Stewart.)

class remain the property of the old institution; and

That all interest on existing loans as December 12, 1907, be computed to February 15, 1908, and that the amount of such accrued interest be placed to the credit of the old institution on the books of the new corporation, and that same be payable on or before December 31, 1908; and

That should James W. Hill and R. C. Wood not take the full \$44,000.00 in stock in the now corporation the balance of the amount not so taken to be paid to them not later than July 1, 1908; and

That the proposition of Captain E. T. Barnette to leave on deposit with the new institution the sum of \$200,000.00 without interest for one year be accepted, and that it be the understanding that such deposit will secure said new corporation against any adverse decision of the court in the Causten vs Barnette suit in so far as such decision may decrease the value of the Gold Bar property as accepted by the present board of trustees.'

And that the executive committee be empowered to see that all papers and transfers be made properly by the officials of the old Fairbanks Banking Company and such [190] transaction legally carried out. Which motion being duly put the same was unanimously carried.

24. It was also moved and seconded that the following paragraph contained in the minutes of January 5th, 1908 of the proposed incorporators, to wit:

'that all interest on existing loans as December 12, 1907 be computed to February 15, 1908, and



(Testimony of Sidney Stewart.)

that the amount of such accrued interest be placed to the credit of the old institution on the books of the new corporation and that same be payable on or before December 31, 1908'

be changed so that the words 'February 15' be made to read 'March 15.' Carried.

25. It was moved by Mr. Robinson, seconded by Mr. Yarnell that the president and secretary be instructed to issue stock to E. T. Barnette, James W. Hill and R. C. Wood in exchange for the property received by the Fairbanks Banking Company, a corporation as follows:

440 shares to E. T. Barnette

220 shares to James W. Hill

220 shares to R. C. Wood

and that said stock be deemed fully paid in exchange for property received from said persons. Said stock being issued for the assets of the corporation upon which a valuation has been placed at \$288,000.00 in excess of its total liabilities, less \$200,000 the capital stock of the old bank, the personal property of E. T. Barnette. Carried.

26. It was moved by Mr. Jonas, seconded by Claypool that the secretary be instructed to insert in the minute book of the corporation the minutes of the proposed stockholders of the Fairbanks Banking Company of meetings held January 5th, 1908, meeting held January 6th, 1908, and of the meeting of the so-called board of directors held Feby 8, 1908, for future reference and preservation. [191] Carried.

(Testimony of Sidney Stewart.)

### MINUTES OF COMMITTEE MEETING.

Fairbanks, Alaska, January 5, 1908.

A meeting of the committee consisting of Mr. John Jesson, Mr. D. H. Jonas and Mr. C. E. Claypool, elected by ballot at a meeting of nineteen representative business, professional and mining men, was held at the hour of 10 A. M. at the office of the Fairbanks Banking Company, Fairbanks, Alaska, Captain E. T. Barnette and James W. Hill, President and Vice-President, respectively, of the Fairbanks Banking Co. were present.

B. R. Dusenbury was chosen to act as secretary of the meeting.

The object of the meeting was to go into the details of the reorganization of the Fairbanks Banking Company and of the taking over of the business of the said institution by the proposed new corporation.

The following particulars and recommendations were prepared for consideration at an adjourned meeting of the aforementioned business, professional and mining men to be held at the offices of McGinn & Sullivan, Fairbanks, Alaska, at 8 P. M. Monday, January 6th, 1908.

That the issue of stock for the proposed new corporation be as of date February 15, 1908, that notes be taken for all deferred payments, that same bear interest at the rate of one per cent per month from February 15, 1908, until paid, that 25% of the unpaid for stock be due and payable on or before June 1, 1908, that the balance be due and payable on or before July 1, 1908; and

(Testimony of Sidney Stewart.)

That Captain E. T. Barnette and James W. Hill with such associates as they may require prepare a subscription list; and

That the amount subscribed by any person be left to that person and in case of over subscription should be reduced proportionately; and

That the notes, properties and securities of the Fairbanks Banking Company, the old institution, examined by its present acting board of trustees and on which a valuation of \$288,000.00 in excess of its total liabilities was placed, be accepted; and

That all notes, properties and securities which said board of trustees placed in the number 3, or doubtful, class remain and be the property of the old institution; and

That all interest on existing loans as December 12, 1907, be computed to February 15, 1908, and that the amount of such accrued interest be placed to the credit of the old institution on the books of the new corporation and that same be payable on or before December 31, 1908; and [192]

That should James W. Hill and R. C. Wood not take the full \$44,000.00 in stock in the new corporation the balance of the amount not so taken to be paid to them not later than July 1, 1908; and

That the proposition of Captain E. T. Barnette to leave on deposit with the new corporation the sum of \$200,000. without interest for one year be accepted, and that it be the understanding that such deposit will secure said new corporation against any adverse decision of the Court in the Causten vs. Barnette suit

(Testimony of Sidney Stewart.)

in so far as such decision may decrease the value of the Gold Bar property as accepted by the present board of trustees; and

That the officers of the new corporation be president, vice-president, 2d vice-president, cashier and assistant cashier, treasurer and secretary; and

That the number of the board of directors be 12; that 4 be elected 6 months, 4 for 12 months, and 4 for 18 months, or until their respective successors are duly elected and qualified; and

That dividends be declared semi-annually on June 30 and December 31.

B. R. DUSENBURY,

Secy.

Fairbanks, Alaska, January 6th, 1908.

An adjourned meeting of representative business, professional and mining men was held at the office of McGinn & Sullivan, Fairbanks, Alaska, at 8:30 P. M. for the purpose of receiving the report of a committee appointed at a previous meeting and for the purpose of discussing further plans for the reorganization of the Fairbanks Banking Company.

The committee consisted of Jonas, Jesson and Claypool.

The report of the committee was read to the meeting by B. R. Dusenbury. It was re-read and passed on section by section as read.

On motion of Claypool, seconded by Robinson, the report of the committee was adopted and ordered kept as a part of the records of the meeting. Motion carried.



(Testimony of Sidney Stewart.)

B. R. Dusenbury was chosen secretary of the meeting.

The preamble to the subscription list was read to the meeting by Mr. John L. McGinn.

Prior to the signing of same by any one the following motion prevailed: Moved Jonas, second Claypool, that the subscription for stock in the proposed new corporation by Mr. John Jesson on behalf of his brothers L. N. Jesson, S. Jesson and E. R. Jesson, who are on the outside, be received, as per his request, subject to their approval on their arrival here. Motion carried. [193]

The following subscriptions were received:

E. T. Barnette.....	440	shares
R. C. Wood.....	220	“
J. W. Hill.....	220	“
S. Jesson.....	100	“
E. R. Jesson.....	100	“
J. A. Jesson.....	100	“
L. N. Jesson.....	100	“
John Flygar.....	20	“
J. C. Kellum.....	100	“
Dave Yarnell.....	100	“
H. Stark.....	100	“
D. Ryan.....	25	“
C. E. Claypool.....	50	“
D. H. Jonas.....	100	“
Chas. J. Robinson.....	50	“
B. R. Dusenbury.....	50	“
John L. McGinn.....	100	“

(Testimony of Sidney Stewart.)

Moved *Barrett*, second Robinson, that the name of Mr. Ryan be added to the Committee. Carried.

Moved by McGinn and duly seconded that the committee be continued.

It was the sense of the meeting that anyone subscribing for 10 shares *of* less of the stock of the proposed corporation, that in case of over-subscription that the number of shares be not cut down.

On motion the meeting adjourned.

B. R. DUSENBURY,  
Secretary."

I wish next to read from the minutes of the subscribers' meeting; a meeting of the subscribers for stock of the Fairbanks Banking Company, incorporated, which is made a part of the minutes of the directors' meeting from which I am now reading, and the part I wish to read is as follows (reads):

It was moved by Charles E. Claypool seconded by L. T. Erwin that the meeting proceed to the election of a board of 12 directors. Carried.

Capt. Barnette stated that he had given the matter of the board of directors considerable thought and desired to name a list of 12 stockholders who he thought would make a strong representative board. He stated further that the stockholders were, of course, at perfect liberty to name others for the consideration of the meeting. The list submitted was as follows:

Dave Yarnell, J. A. Jesson, M. H. McMullen, John P. Anderson, D. H. Jonas, Dan Ryan, Chas. J. Robinson, W. G. Cassels, John Flygar, Robt. Sheppard,

(Testimony of Sidney Stewart.)

Chas E. Claypool, E. T. Barnette. [194]

There being no other nominations, it was moved by McGinn, seconded by J. A. Jesson, the nominations closed. Motion carried.

It was moved by *Barrett*, seconded by L. T. Erwin that the secretary cast the ballot in favor of the above-named persons as directors. Carried.

The ballot being so cast, the 12 named persons were declared duly elected."

I read next from the minutes of the meeting of the board of directors of the Fairbanks Banking Company held on February 8th, 1908, at 9:30 P M., and which are embodied in the minutes of the directors of March 12, as follows (reads):

"It was moved by D. H. Jonas, seconded by Robinson that the meeting proceed to the election of officers of the bank, except as to second vice-president. Carried. The following were unanimously elected as such officers: E. T. Barnette, President. James W. Hill, Vice-president, R. C. Wood, Cashier, B. R. Dusenbury, Assistant Cashier, Secretary and Treasurer."

I wish now to read from the minutes of the incorporators' meeting of the Fairbanks Banking Company, found in the secretary's file, which has been referred to as File No. 312.

(Conference between attorneys, and they agree that the date "February" 12, 1908, as the date of said meeting, should be "March" 12, 1908, and that record be amended accordingly.)

I will first read paragraph 7 (reads):

(Testimony of Sidney Stewart.)

“7. The secretary presented a form of by-laws for the regulation of the affairs of the company which were read article by article and unanimously adopted and a copy thereof ordered spread upon the minutes.” The by-laws follow, but I will not read them. Paragraph 9 (reads):

“9. Mr. Hill then stated that prior to incorporation [195] for the purpose of determining the amount of capital stock that would be subscribed, and the name and numbers of the stockholders, that a subscription list had been circulated among the mine operators and merchants of the Fairbanks Recording District, Territory of Alaska, and moved that said subscription list containing the names of the intended stockholders of the Fairbanks Banking Company and the amount of stock subscribed by them, and also, as to the manner of payment of the same be spread upon the minutes of this meeting. Which motion was seconded by Mr. Dusenbury and an order made that said subscription list be spread upon the minutes, the same being as follows:”

I will not read the subscription list, because it has been copied in the pleadings, save this part: It closes as follows (reads):

“In witness whereof we have hereunto set our hands and seals this \* \* \* day of January, 1908.

Name.

Number of Shares.

E. T. Barnette.....440 shares.”

Mr. McGINN.—We ask that the original subscription list be produced for the purpose of showing that



(Testimony of Sidney Stewart.)

Mr. Wood never signed it.

Mr. RIDER.—The original subscription list will be produced and you can examine it.

Mr. McGINN.—With that understanding we withdraw our objection.

Mr. RIDER.—(Continues reading.)

“E. T. Barnette..... 440 shares

R. C. Wood..... 220 shares

James W. Hill..... 220 shares.”

There are names of the other subscribers attached, but I will not read them. (Continues reading.)

“Thereupon Mr. Hill moved that said proposed offers of [196] subscription be accepted by the corporation, and said persons be declared stockholders of the Fairbanks Banking Company. Which said motion was duly seconded by Mr. Dusenbury, and upon being put to vote was unanimously carried, and the persons above named declared to be stockholders of said corporation to the amount of stock hereinbefore set opposite their respective names.

13. On motion duly made and seconded it was resolved that a board of directors as provided in the Articles of Incorporation be elected in three classes and until their successors are elected and qualified:

Messrs. David Yarnell, Dan Ryan, C. J. Robinson and M. H. McMullen were nominated for directors of the company to hold office for the ensuing six months.

Messrs. C. E. Claypool, Robert Shephard, Hans Stark and John Flygar were nominated for direc-

(Testimony of Sidney Stewart.)

tors of the company to hold office for the ensuing twelve months.

Messrs. J. A. Jesson, J. P. Anderson, D. H. Jonas and E. T. Barnette were nominated for directors of the company to hold office for the ensuing eighteen months.

No other nominations having been made the polls were duly open and ballot having been duly had and all the stockholders having voted, the polls were declared closed and the judges of election presented their certificate showing that the aforesaid gentlemen had been duly elected directors of the company.”

14. On motion duly made and seconded it was resolved that in compliance with the laws of Nevada, and the Certificate of Incorporation of the company, that the principal office of the company in the State of Nevada [197] be established and maintained at #116 North Carson Street in Carson City in the County of Ormsby.

15. On motion duly made and seconded it was resolved that the matter of the taking over the property of the Fairbanks Banking Company, the co-partnership consisting of E. T. Barnette, J. W. Hill and R. C. Wood be left to the board of directors. Carried.

I wish to read from the minutes of the executive committee held on April 22, 1908 (Reads):

“Minutes of meeting of the executive committee of the Fairbanks Banking Committee, Fairbanks, Alaska, April 22, 1908.

A special meeting of the executive committee of

(Testimony of Sidney Stewart.)

the Fairbanks Banking Company was held at the office of the company at 7 P. M.

James W. Hill, Vice-president presiding. B. R. Dusenbury, Secretary, present. Members present: Jonas, Claypool, Stark and Hill. The agreement, assignment and deeds relative to the proper transfer of the property of the Fairbanks Banking Company, a copartnership by them to the Fairbanks Banking Company, a corporation, was brought up for consideration. It was moved by Jonas, seconded by Claypool, that the assignment and agreement between James W. Hill, E. T. Barnette and R. C. Wood to and with the Fairbanks Banking Company, incorporated, and the deeds covering Fairbanks and Cleary City property, will be accepted as proper conveyances, and that the deeds be filed for record in the office of the recorder of the Fairbanks Recording District, Fairbanks, Alaska. Motion carried.

There being no further business, the meeting adjourned in due form. [198]

B. R. DUSENBURY,  
Secretary.

Approved May 12, 1908.

B. R. DUSENBURY,  
Secretary."

I wish to read from the minutes of the meeting of the board of directors held on May 12, 1908, the following (Reads):

"Minutes of the meeting of the board of directors of the Fairbanks Banking Company, Fairbanks, Alaska, May 12, 1908.

(Testimony of Sidney Stewart.)

The regular monthly meeting of the board of directors of the Fairbanks Banking Company was held at the office of the corporation at Fairbanks, Alaska, at 8 P. M. E. T. Barnette, President presiding. B. R. Dusenbury, Secretary, present. Members present: Yarnell, Ryan, Anderson, Jesson, Barnette, Claypool. James W. Hill, Vice-president, was present.

The minutes of meetings of the executive committee held on the following dates were read and discussed as read, and on motion made and properly seconded were approved, ratified and passed as the action of the board: April 14, 16, 20, 22, 24, 27, 28 and May 12." [199]

Mr. RIDER.—Q. I will ask you, Mr. Stewart, if you know whether or not the contract between the partnership and the corporation is in the secretary's files—the original contract?

A. That is the agreement?

Q. Yes. A. Yes, sir.

Mr. RIDER.—I wish to offer in evidence the agreement dated March 16, 1908, between E. T. Barnette, James W. Hill and R. C. Wood, copartners doing business under the firm name and style of the Fairbanks Banking Company of Fairbanks, Alaska, as parties of the first part, and the Fairbanks Banking Company, a corporation, organized, created and existing under and by virtue of the laws of the State of Nevada, as party of the second part.

Mr. McGINN.—To which we object on the ground that the evidence that has been introduced in this



(Testimony of Sidney Stewart.)

case shows that the matter of taking over the affairs of the old copartnership was left to the board of directors by the stockholders, with instructions that it should be taken over in accordance with the terms of the agreement that was entered into between the copartners and the subscribers at the meeting held January 5, 1908, and that this agreement does not state the true contract between the parties, in that it fails to reserve to E. T. Barnette, James W. Hill and R. C. Wood—the partnership—the accrued interest that is spoken of in the minutes, and also does not reserve the option to Mr. Hill and Mr. Wood to take money in lieu of stock.

Mr. RIDER.—I have read to you the minutes showing that the matter of these transfers was left to the executive committee.

The COURT.—Is it admitted by the pleadings that this is the agreement that was signed?

Mr. McGINN.—We admit that it is the agreement that was signed, but [200] we state that it is not the true agreement.

The COURT.—It may be admitted, subject to the objections.

Said agreement being the agreement attached to plaintiff's amended complaint marked exhibit "One" and herein marked exhibit "C." [201]

Mr. RIDER.—I now offer in evidence from the secretary's files, being file number 312, the original stock subscription, which is the same as that copied in the pleadings, and I call attention to the signatures thereto of E. T. Barnette, 440 shares, R. C.

(Testimony of Sidney Stewart.)

Wood 220 shares, and James W. Hill 220 shares.

Mr. McGINN.—We object to it on behalf of Mr. Wood because it is not his signature to this subscription list, and it is not binding upon Mr. Wood, and we deny that he signed this subscription list, in the pleadings.

The COURT.—The list may be received subject to the objection.

**[Power of Attorney, R. C. Wood to James W. Hill,  
Dated September 21, 1906.]**

Thereupon plaintiff introduced in evidence the power of attorney from R. C. Wood to James W. Hill, which is in the words and figures as follows, and which is marked exhibit "A." [202]

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**[Plaintiff's Exhibit "A"—Power of Attorney from  
R. C. Wood to Jas. W. Hill.]**

No. 22623.

KNOW ALL MEN BY THESE PRESENTS,  
That I, R. C. Wood, of Fairbanks, Alaska, have made, constituted and appointed, and by these presents do make, constitute and appoint, James W. Hill of the same place, my true and lawful attorney for me and in my name, place and stead, and for my use and benefit to ask, demand and sue for all moneys or debts or demands of whatsoever nature as are now or shall hereafter become due to me in any way, from any cause; and to use all lawful means for the collection or enforcement of the same, or to compromise the same, and give all necessary discharges therefor. To bargain, contract, agree for,

purchase, receive, take lands, tenements, hereditaments and accept the seizin and possession of all lands, and all deeds and other assurances in the law therefor, and to lease, let and demise, bargain, sell and remise, release, convey, mortgage, hypothecate lands, tenements and hereditaments on such terms and conditions, and under such covenants as he shall see fit; and to take up all public lands under the laws of the United States, and take all necessary steps therefor the same as I might or could do if personally present. To bargain, agree for, buy, sell, mortgage, hypothecate, and in every way and manner deal in and with goods, wares and merchandise, choses in action and other property in possession or in action, and to make, do and transact all and every kind of business of what nature or kind soever.

And also for me and in my name and as my act and deed to sign, seal and execute, deliver and acknowledge such deeds, leases and assignment of leases, covenants, indentures, agreements, mortgages, bills of lading, bills, bonds, notes, receipts, evidences of debts, releases, satisfaction of mortgages, judgments and other debts, and such other instruments in writing of whatever kind and nature as may be necessary or proper in the premises.

To organize corporations and to use my name as incorporator and subscribe articles of incorporation for me and in my name, and to [203] subscribe for such amounts of the capital stock thereof as he shall see fit. To accept and receipt for me any stock of any corporation so incorporated, or organized, or any other corporation, and to vote any and all stocks

held by me in any corporation as fully and completely as I might or could do if personally present.

To bargain, give, sign, transfer, sell, grant, exchange and set over, upon such terms or in such amounts as he may see fit. In short, to do each, all and every act and thing necessary for the incorporation of *of* companies, and to use and control any and all stock or any corporation of companies, and to use and control any and all stock of any corporation belonging to me in the same manner as if he were the owner thereof. To purchase and acquire in my name the corporate stock of any corporation now organized, and to use and control the same.

Giving and granting unto my said attorney full power and authority to do and perform all and every act and thing whatsoever requisite and necessary to be done in and about the premises, as fully to all intents and purposes as I might or could do is personally present, with full power of substitution or revocation hereby ratifying and confirming all that my said attorney, or his substitute or substitutes shall lawfully do or cause to be done by virtue of these presents.

IN WITNESS WHEREOF I have hereunto set my hand and seal this the 21st day of September, 1906.

R. C. WOOD. (Seal)

Witnesses: M. L. SULLIVAN.

JOHN L. MCGINN.



United States of America,  
Territory of Alaska,—ss.

Now, on this 21st day of September, 1906, before me, the undersigned notary public, personally appeared R. C. Wood, to me personally known to be the individual described in and whose signature is subscribed to the foregoing instrument, and he acknowledged [204] to me that he signed, sealed and delivered the same freely and voluntarily for the uses and purposes therein mentioned.

IN WITNESS WHEREOF I have hereunto set my hand and seal this the 21st day of September, 1906.

[Seal]

M. L. SULLIVAN,  
Notary Public for Alaska.

Filed for record March 16th, 1908, at 40 minutes past 4 P. M. G. B. Erwin, Recorder. By Henry T. Ray, Deputy

United States of America,  
Territory of Alaska, Fairbanks Precinct,—ss

THIS IS TO CERTIFY that the above and foregoing is a full, true and correct copy of Power of Attorney as same appears of record in Vol. I, Powers of Attorney, at page 553, et seq., thereof, under official number 22,623, records of said precinct and territory.

IN WITNESS WHEREOF I have hereunto set my hand and affixed my official seal at Fairbanks, Alaska, this 17th day of April, A. D. 1914.

JOHN F. DILLON,  
Commissioner and Exofficio Recorder in and for  
said Precinct and Territory.

(Testimony of Sidney Stewart.)

[Endorsed]: Certified Copy Power of Attorney. R. C. Wood to James W. Hill. Dated Sept. 21, 1906.

#1756, Plffs. Ex. "A." Filed in the District Court, Territory of Alaska, 4th Div. Apr. 22, 1914. Angus McBride, Clerk. By P. R. Wagner, Deputy. [205]

Mr. RIDER.—Q. Mr. Stewart, have you with you the books of the partnership known as the Fairbanks Banking Company and consisting of E. T. Barnette, James W. Hill and R. C. Wood?

A. There are some of them there (indicating).

Q. I will ask you if you have the one that shows the account of the Gold Bar Lumber Company stock, how it was carried on their books, the books of the partnership. A. Yes, sir.

Q. What book is this (indicating).

A. This is the general ledger of the partnership.

Q. Of the Fairbanks Banking Company?

A. Of the Fairbanks Banking Company, a partnership.

Q. Will you turn in it to the account showing the entries in reference to the Gold Bar Lumber Company stock?

A. There is no account in here at that time of the Gold Bar Lumber Company.

Q. How was it carried?

A. It was carried then as the Johansen Investment Company, I believe.

Q. Turn to that account.

Mr. McGINN.—To which we object because it is not shown that the Johansen Investment Company

(Testimony of Sidney Stewart.)

and the Gold Bar Lumber Company is the same thing.

Mr. RIDER.—Q. In the account to which you refer, is there an item of stock of the Gold Bar Lumber Company?

A. (Examines book.) I don't quite catch that question.

Q. Can you identify in the account to which you refer as the Johansen Investment Company an entry respecting the Gold Bar Lumber Company stock?

A. Yes, sir.

Q. What is that? [206]

Mr. McGINN.—To which we object. There is nothing to show there what that is. The book speaks for itself.

The COURT.—Q. How do you identify it?

A. The balance of this account was the amount of Gold Bar stock that was transferred to the corporation.

Mr. RIDER.—Q. In that account which you have examined, what is the value or the amount at which that stock was carried at the time it was first entered in that account, and the date of the entry.

A. That runs back to another ledger that I have not here. This balance here is of date January 2, 1907, which is brought forward from another ledger prior to this one.

Q. What is the balance shown there under that date?

A. January 2, 1907, the balance shown: Balance from Ledger No. 3, page 548, \$164,087.71.

(Testimony of Sidney Stewart.)

Q. Continuing on down with that account, are there any material increases or changes in that valuation?

A. Yes, sir. There are several entries here.

Q. Give me the entries down to February, 1908.

A. Including February?

Q. No, stop with February. Down to February, 1908. [207]

A. On August 21, 1907; interest on \$80,000—This is the memorandum as it appears on the ledger page—Interest on \$80,000, 12/28, \$1000. Under the same date, or a blank date, presumably the same date. Interest on \$80,000, 3/28, 7/28, \$1,333.33. September 18. Telegram Armstrong, from page 147, \$3.55. And on September 25, Telegram from Johansen, from page 153, \$3.30.

A. The total amount is \$166,427.89.

Mr. RIDER.—Q. When is the next change in that total?

A. The next entry *in* under date February 29, 1908.

Q. What is the entry there?

A. The memorandum says: Note and interest Scan Am—it means Scandinavian-American—brought from page 253, in amount of \$81,640.

Q. What is the next entry?

A. Under date of March 16 is: Inc—(Interrupted)

Q. What year?

A. Under same year, 1908; Inc.—Abbreviation for “increased”—valuation, from page 262, \$93,881.11.



(Testimony of Sidney Stewart.)

Q. What does that make the total of that account? [208]

A. That makes the total \$341,949.

The COURT.—Q. What was the item before that that you read?

A. Increased valuation \$93,881.11. There are other entries on the other side. The account is closed here.

Mr. RIDER.—Q. What other entries on the other side of the ledger?

A. Under date of March 16, 1908, a credit to the account; By surplus, from page 263, in amount \$341,949.

Q. That balances that account? A. Yes, sir.

Q. Mr. Stewart, I hand you another book. Can you tell me what this book is?

A. This is the cash-book of the Fairbanks Banking Company, a partnership—the cash-book and journal.

Q. The former book you used; was that the ledger? A. Ledger Number 3.

Q. Now, in the account of the Johansen Investment Company from which you read a while ago appears the entry under date of March 15, increased value \$93,881.11. Will you refer to page 262 of the journal from which that entry purports to have been taken and read what the journal entry is respecting that item.

A. Under date of March 15th there are two or three pages of journal entries.

(Testimony of Sidney Stewart.)

Q. Read the entry under that date respecting that item.

A. Under date of March 16, 1908; Johansen Investment Company account, in the debit columns \$93,881.11. To profit and loss, credit \$93,881.11. On the next line it reads: Increased valuation Gold Bar property over book value. [209]

Mr. RIDER.—There were four exhibits used yesterday and read from, and I would like to have them marked as exhibits.

The COURT.—They were admitted, subject to objection.

Subscription for stock marked Plaintiff's Exhibit "B."

Agreement between partnership and corporation marked "C,"

Minutes of meeting March 12, 1908, marked "D," and

Minutes of first directors meeting marked "E." All marked as plaintiff's exhibits.

Q. Mr. STEWART, I hand you a package of letters and telegrams which I wish you would examine and state, if you can, whether or not they came from the files of the receiver.

A. They are part of the files of the receiver.

Mr. RIDER.—I wish to offer in evidence, from the papers identified by Mr. Stewart, the following: A letter addressed to Captain E. T. Barnette, dated September 16, 1907, signed "Al," on the letter-head

(Testimony of Sidney Stewart.)

of the Gold Bar Lumber Company. That will be number 1.

Number 2: A telegram dated Seattle, September 24, 1907, addressed to the Fairbanks Banking Company from, and signed by Carl M. Johansen. With them will have to go the correspondence found in the copy-books of the bank, and I will have these copy-books identified.

Q. Can you identify these copy-books as copy-books taken from the files of the receiver?

A. I can.

Q. You have examined them, have you?

A. Yes sir.

Mr. RIDER.—Number 3: A telegram addressed to C. M. Johansen, [210] signed, Fairbanks Banking Company, dated, Fairbanks, Alaska, September 17, 1907. That is in copy-book 4, page 64.

Number 4: A communication—I can't tell whether it is a telegram or a letter—dated Fairbanks, Alaska, September 17, 1907, addressed to A. T. Armstrong, signed by the Fairbanks Banking Company. Found in copy-book 4, page 63.

Number 5: A letter on the letter-head of the Gold Bar Lumber Company, dated Gold Bar, Washington, October 12, 1907, addressed to Captain E. T. Barnette, and signed, "Al."

Number 6: A letter signed by James W. Hill, Vice-president; addressed to Carl M. Johansen, dated October 26. That is found in copy-book 20, page 47.

Number 7: Copy of a telegram found in letter-book 4, page 106, addressed Scandinavian American

(Testimony of Sidney Stewart.)

Bank; signed by Fairbanks Banking Company, dated Fairbanks, Alaska, October 26, 1907.

Number 8: A telegram addressed to Fairbanks Banking Company, signed, Scan Amn Bank, dated Seattle, November 5, 1907.

Number 9: A telegram addressed to Fairbanks Banking Company, signed The Scan Amn Bank, dated Seattle, November 6, 1907.

Number 10: A telegram addressed to Fairbanks Banking Company, signed A. T. Armstrong, dated Seattle, November 12, 1907.

Number 11: Copy of a telegram found in letter-book 4, page 125, addressed to A. T. Armstrong; signed, Fairbanks Banking Company, dated, Fairbanks, November 12, 1907. [211]

Number 12: Copy of a letter found in copy-book 20, page 201; dated November 20, 1907, addressed to A. T. Armstrong, and signed, James W. Hill, Vice-president.

Number 13: A telegram signed James W. Hill, and addressed to R. C. Wood, dated Fairbanks, December 16, 1907.

Number 14: A telegram signed, Fairbanks Banking Company; addressed to R. C. Wood, dated at Fairbanks, December 17, 1907.

Number 15: A telegram signed R. C. Wood; addressed to Fairbanks Banking Company, and dated December 17, 1907.

Number 16: A letter addressed to R. C. Wood; signed "Jim"; dated, Fairbanks, January 8, 1908.

Number 17: A copy of a telegram found in letter-



(Testimony of Sidney Stewart.)

book 4, page 205, addressed to C. M. Johansen, signed E. T. Barnette, dated Fairbanks, March 14, 1908.

Number 18: A telegram signed Fairbanks Banking Company, addressed to R. C. Wood, dated, Fairbanks, March 16, 1908.

The plaintiff now offers to read in evidence portions of the letters and telegrams which have been identified, bearing upon the stock of the Gold Bar Lumber Company, and the Gold Bar Lumber Company in general. [212]

Q. Now, Mr. Stewart, attached to this contract exhibit "B" is a list of loans and discounts which were sold by the partnership to the corporation. Have you examined those loans and discounts?

A. Yes, sir.

Mr. McGINN.—I suppose we can make the motion to strike later on?

The COURT.—Very well.

Mr. RIDER.—Q. Loans and discounts, the total of which—(Interrupted).

Mr. McGINN.—Is that Plaintiff's Exhibit "C"?

Mr. RIDER.—Yes. (Continuing)—as shown in the body of the contract under the item "C," we have outstanding loans and discounts of the value of \$353,842.54. Mr. Stewart, are any of those loans and discounts which are listed in this contract now in the possession of the receiver? A. Yes, sir.

Mr. CLARK.—We object to that as immaterial. The question would be: What was their value at that time? The fact that they are in the possession of

(Testimony of Sidney Stewart.)

the receiver is not evidence that they were valueless at that time. I presume that is the purpose.

Mr. RIDER.—You are wrong in your presumption.

The COURT.—Objection overruled.

Mr. CLARK.—We except.

Mr. RIDER.—Q. Mr. Stewart, have you made a computation of those loans and discounts referred to in exhibit “C” and sold by the partnership to the corporation, and which are now in the hands of the receiver, for the purpose of determining which ones were past due at the time this contract was entered into? A. I have such a list, yes, sir. [213]

Q. Mr. Stewart, what does your computation show is the total amount of the past due paper, that is, paper past due on March 16, 1908, held by the Fairbanks Banking Company and transferred to the Fairbanks Banking Company, a corporation, which is now in the hands of the receiver unpaid.

Mr. McGINN.—I make the same objection. (Overruled. Defendants except.)

A. \$69,908.94.

Mr. RIDER.—Q. What was the total amount of past due paper in the hands of the partnership which was transferred to the corporation by this contract, if you have it?

(Defendants make same objection. Overruled, subject to the objection. Defendants except.)

A. I don't believe I have that figured. It is on the contract.

Q. You say it is on the contract? I am asking

(Testimony of Sidney Stewart.)

now the total amount of past due paper that was transferred by the partnership to the corporation, if you have that.

Mr. HEILIG.—You mean that was past due on the 16th of March?

Mr. RIDER.—Yes, that was transferred by the partnership to the corporation that would be past due on March 16th, 1908.

A. I don't believe I have that.

Q. You have not computed that?      A. No, sir.

Q. Among the notes that were transferred to the corporation by the partnership, as shown by the list attached to the contract, are two executed by the Tanana Electric Company, one numbered 1899 for \$2600.00, the other numbered 2080 for \$25,397.38. Are either of those notes in the hands of the receiver at this time?      A. Yes, sir. [214]

Q. Both or one?      A. Both of them.

Q. Unpaid or paid?

Mr. MCGINN.—We object to that. We ask, first of all, that they produce the notes. (Notes handed to Mr. McGinn.)

Mr. RIDER.—Q. Now, will you turn to the books of the Fairbanks Banking Company, a partnership, and find its account with the Tanana Electric Company.

A. That would be in the individual ledger account, but I have not that book here.

Q. Is it where I can get it?

A. No. It is locked in the vault.

Q. I wish you would get that.

(Testimony of Sidney Stewart.)

Q. Have you the account now?      A. Yes, sir.

Q. Now, does that account show a credit to the Tanana Electric Company for the note of \$2600.00?

A. Under date of July 1, 1907.

Q. What was the condition of the Tanana Electric Company account at the time it was given credit for this note?

A. The last entry before that is on the 29th of June, 1907, showing a credit to their account of \$626.15.

Q. After the \$2600.00 credit was given, what change was made in their account?

A. On that same day there was a charge of \$211.50. They had a credit balance that night of \$3,014.65.

Q. Do the books show the withdrawal of the credit of \$2600.00 that was given on July 1, as you have stated?

A. Well, on July 2d there is a check of \$2,760.53. I don't know what it was for.

Q. Charged to the Tanana Electric Company account?      A. Yes, sir. [215]

Q. Do you know the items that make up that \$2700.00 check?      A. No, sir.

Q. When was the note of \$25,397.38 charged in that account?

A. It was credited in that account.

Q. Or credited?

A. Credited on the 16th of November, 1907.

Q. What was the condition of the account before that was credited?



(Testimony of Sidney Stewart.)

A. There was an overdraft on the account of \$6,738.21.

Q. Do the books show what became of the credit of \$25,397.38?

A. Only that it was placed to their credit.

Q. What became of it? Did it remain there?

A. No. On the 16th and 18th of November the account was all checked out.

Q. In what items?

A. On the 16th there was a check for \$4,363.75, and \$12,939, and \$279.62, and \$76.08, and on the 18th \$1000.

Q. Do you know what went to make up the various items you have called there; whether they were all in one item, or composed of several?

Mr. McGINN.—We object as irrelevant and immaterial, having nothing to do with the issues in this case.

Mr. RIDER.—I will make it material in a moment.

(Objection overruled. Defendants except.)

A. I don't know as there is any record to show what those items were for, other than that I believe they were making advances for the Tanana Electric Company; there was a general account there, deposits and checks.

The COURT.—Just what the record shows.

A. Yes, that is all. The account shows a general checking and deposit account. There are checks and deposits all the time. [216]

Mr. RIDER.—Q. I hand you some telegrams and

(Testimony of Sidney Stewart.)

letters relating to the Tanana Electric matter. Can you identify them as from the files of the receiver?

(Hands same to witness.)      A. Yes, sir.

Q. I wish to call your attention to a telegram dated Seattle, April 30, 1907, and also to a telegram dated Seattle, September 7, 1907. I offer those two telegrams in evidence. [217]

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**[Plaintiff's Exhibit "G"—Telegram from Scandinavian-American Bank to Fairbanks Banking Co.]**

“Seattle, Washington, April 30, 1907.  
Fairbanks Banking Company, Fairbanks, Alaska.

Refer to your telegram of 29th April Will give a credit of \$18,500 account Tanana Electric Company.

(Signed) SCANDINAVIAN-AMERICAN  
BANK.

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**[Plaintiff's Exhibit "H"—Telegram from Scandinavian-American Bank to Fairbanks Banking Co.]**

“Seattle, September 7, 1907.  
Fairbanks Banking Company, Fairbanks, Alaska.

Accept note of Tanana Electric and make advances accordingly.

(Signed) J. E. CHILBERG.” [218]

Mr. RIDER.—Q. Upon these two telegrams, Mr. Stewart, will you examine the account of the Tanana Electric Company, and see if credit was

(Testimony of Sidney Stewart.)

given to them based upon these two telegrams, and, if so, the date the credit was given.

A. This telegram of April 30th, on May 1st there is a credit on the account of \$18,500; and the other telegram dated September 7th, on September 9th there is a credit for \$29,000.

Q. Were those credits for \$18,000 and \$29,000, which you have just read exhausted prior to the date of these two notes for \$2600 and \$25,397, as shown upon that book?

A. The \$2600 note was given before this September credit was, and that was all checked out before September. And the credit of \$25,000 was checked out soon after it was given.

Mr. RIDER.—Q. Was it exhausted before November 16th, 1907? A. Yes.

Q. And on September 16, 1907, a credit to the Tanana Electric Company of \$25,000 was given?

A. Yes, sir.

Mr. RIDER.—Now, I offer a portion of a letter from Seattle, Washington, to the Fairbanks Banking Company, signed by J. E. Chilberg, and on the letter-head of the Scandinavian-American Bank, the portion being marked. (Hands to Mr. McGinn.)

Mr. RIDER.—(Reads): “Seattle, Washington, November 9, 1907. Fairbanks Banking Company. This situation compels an actual cessation of all loans or advances of every kind whether they have been arranged for before or not, and it will necessitate a discontinuance of advances to the Tanana

(Testimony of Sidney Stewart.)

Electric Company on their mortgage.”

Mr. McGINN.—Received here December 3d.  
[219]

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**[Plaintiff's Exhibit "I"—Letter from Scandinavian-American Bank to Fairbanks Banking Co.]**

**THE SCANDINAVIAN-AMERICAN BANK.**

Andrew Chilberg, Prest.

J. F. Lane, Cashier,

J. E. Chilberg, Vice-prest.

William Thaanum, Asst. Cash.

J. B. Agen, 2nd Vice-prest.

L. H. Woolfolk, Asst. Cash.

**CAPITAL PAID UP \$500,000.**

**Surplus \$350,000.**

**Seattle, Wash., November 9, 1907.**

**Fairbanks Banking Co.,**

**Fairbanks, Alaska.**

Gentlemen:—

I have endeavored to make my telegrams in the last two or three days as explicit as possible. What has happened to the United States seems impossible and inconceivable. Two weeks ago New York City refused to pay their balances in money and went on what is called a Clearing-house Certificate basis. They were followed the next day by Chicago, St. Louis, Kansas City, St. Paul, Minneapolis, Denver, Portland, and a day later by Spokane and Tacoma. Seattle had a great deal of cash in their own vaults and the Clearing-house thought we might weather it without going on a Clearing-house Certificate basis. We found, however, after a 5 days' trial that the other cities were bleeding our reserve to such an



extent that it was impossible to continue, as we receive nothing for drafts and checks deposited with us excepting credit and were compelled to pay cash for checks on us. You can understand how quickly almost any sum of money would have decreased. Added to this, newspaper reports of the situation of other cities caused our own people to commence to draw coin for putting it in safety deposit boxes. The result would have been, in a very few days, absolutely no money. We were therefore compelled to refuse to pay coin, and are now working upon a Clearing-house Certificate basis, exchanging balances with each other in certificates and each bank holding its own cash. This situation is simply astounding. That every city in the United States should be absolutely tied up financially at one time is more than any one could have dreamed of, and I certainly did not expect it would have been possible. The [220] result is that our New York, San Francisco Chicago and other balances are absolutely unavailable, and the only thing we have to rely upon is the cash we have here in our own vaults.

We have now arranged to issue Clearing-house Certificates based on certain very high-class security, such as warrants, bonds, etc., for circulation among our local business men to try and tide over the difficulty until New York and other cities can commence to release money for our use here. In the meantime, you will understand that it is utterly impossible to loan any money or make any advances against after-receipts of gold. Hence, our cablegram to you, and I will say here that the American Savings Bank, I

am informed, agreed with the Washington Trust Co. to send the same kind of a cablegram to Bonnifield. Having failed to do this, of course we have no control over them, as Bonnifield has money actually on deposit with them at this time, but I think even then Mr. Gleason will have cause to regret it as each one of those transfers depletes his reserve just so much. This situation compels an actual cessation of all loans or advances of any kind, whether they have been arranged for before or not, and it will necessitate the discontinuance of advances to the Tanana Electric Co. on their mortgage. I have not yet been able to get clearly in my mind what those advances are for, as I agreed to advance against the installation of the water power plant and Hutchinson's report indicated no such cost as you outline in your cablegram. I did not get to see Richmond when he was here as I was out of the city and he could not wait on account of the illness of some relative of his in San Francisco.

Of course during the last weeks it has been impossible for me to think of anything excepting banking, and do not expect to have any relief in that direction for two or three months. I am trusting upon your ideas of fairness and generosity to cover your loans and advances just as quickly as possible and [221] meet us at this time in the same spirit that we have met you when you were in trouble. This situation is not of our making and is absolutely beyond our control. Our business here was conducted, as you doubtless know, on a very conservative basis, and our en-

tire reserve amounted to about 30%. They were 30% when the lid, as we call the Clearing-house Certificates system, was put on.

I can think of nothing more to add to this letter that will make the situation more clear to you. I hope you will be able to get in position to make more money out of the business in the near future than you did during the past year.

With kindest regards to Capt. Barnette, Mr. Hill and Mr. Wood, I am,

Yours very truly,

J. E. CHILBERG.

[Endorsed]: #1756. Pltff.'s Ex. "I." Filed in the District Court, Territory of Alaska, 4th Div. Apr. 23, 1914. Angus McBride, Clerk. By P. R. Wagner, Deputy. [222]

(Marked Plaintiff's Exhibit "I.")

Mr. RIDER.—Now, I offer a telegram dated November 10, 1907, at Seattle, to the Fairbanks Banking Company, from J. E. Chilberg. (Hands same to McGinn.) In further explanation of these exhibits, there will be some testimony respecting the fact that reliance was placed upon a supposed guaranty of the Scandinavian-American Bank, against which these advances were made. That testimony will come from another witness than Mr. Stewart. (Reads):

**[Plaintiff's Exhibit "J"—Telegram from Scandinavian-American Bank to Fairbanks Banking Co.]**

"Seattle, Washington, November 10, 1907.  
Fairbanks Banking Company, Fairbanks, Alaska.  
Advance nothing more Tanana Electric Company.  
Signed: J. E. CHILBERG."

(Marked Plaintiff's Exhibit "J.")

Now, I offer a telegram from R. C. Wood to the Fairbanks Banking Company, dated Seattle, December 10, 1907. (Hands same to Mr. McGinn.)

Mr. McGINN.—The same objections.

The COURT.—I will hear it.

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**[Plaintiff's Exhibit "K"—Telegram from R. C. Wood to Fairbanks Banking Co.]**

Mr. RIDER.—(Reads): "Chilberg will not pay Tanana Electric note as per your telegram 16 November credit has been granted for note September 8 twenty-five thousand according to their statement our account balanced they refuse to pay drafts on presentation. Scan. American Bank will give credit of two hundred thousand on condition that suit dismissed, provided we accept the assignment note and mortgage Tanana Electric against which they have advanced forty three thousand."

The COURT.—It may be admitted, subject to the objection.

(Marked Plaintiff's Exhibit "K.") [223]

Mr. RIDER.—A telegram. Fairbanks, Alaska, December 11, 1907. Signed by James W. Hill and



(Testimony of Sidney Stewart.)

addressed to R. C. Wood. (Hands same to Mr. McGinn.)

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**[Plaintiff's Exhibit "L"—Telegram from Jas. W. Hill to R. C. Wood.]**

Mr. RIDER.—(Reads): "We will not agree assume Tanana Electric loans one hundred thousand. Feel that Scandinavian-American take advantage of our position to force us. Why does Chilberg refuse to pay Tanana Electric notes after having promised to do so? Our condition hopeless. Have no alternative but close up the business. Is there any possibility of inducing Scandinavian-American if they can take care of outstanding drafts and telegraphic transfers. If they refuse, can McCord help you procure elsewhere? Overdraft on our books Scandinavian American one hundred eighty thousand. In order to protect outstanding drafts on other banks, should remit immediately."

The COURT.—It may be admitted.

(Marked Plaintiff's Exhibit "L.")

Mr. RIDER.—Q. Mr. Stewart, will you find the profit and loss account of the partnership of the Fairbanks Banking Company as it existed in the fall of 1907?

A. (Witness examines books.)

Q. In the contract between the corporation and the partnership, among the assets transferred is an item of "Warehouse of agreed value of \$3360." Do you find any item in the profit and loss account in reference to that warehouse?

(Testimony of Sidney Stewart.)

Mr. McGINN.—We object to that as irrelevant and immaterial.

Mr. RIDER.—Suppose they had charged off part of that before this sale?

The COURT.—Objection overruled. [224]

A. Under date of December 31, 1907, in the profit and loss account of the partnership of the Fairbanks Banking Company there is 20 per cent depreciation warehouse \$672.00.

Mr. RIDER.—Q. What was that warehouse carried at prior to that depreciation? A. \$3360.

Q. Now, is there any other charge subsequent to the one of December 31st, or credit, in reference to the warehouse, respecting that amount which was charged off as 20 per cent depreciation \$672?

A. Under date of March 16, 1908, in the profit and loss account, there is a credit account warehouse \$672.

Q. Turn to the account carried on that book as "bad debts." A. "Doubtful account."

Mr. RIDER.—Q. In that doubtful account do you find any reference to any of the notes which are included in the contract between the copartnership and the corporation? A. Yes, sir.

Q. What notes?

A. Those that are included in the contract were: Barrett \$16,476.18, Brazeau \$400, Schaupp \$4,420, Schaupp \$438, and Schaupp \$1,245.81.

Q. That is all that is included in the contract?

A. Yes, sir. [225]

Mr. RIDER.—Q. Now, on December 31, 1907,

(Testimony of Sidney Stewart.)

was there any credit given to the doubtful account; if so, what is it?

A. On that date there was a credit of \$20,641.34 noted as  $33\frac{1}{3}$  per cent depreciation.

Q. And the total charge to doubtful account on that date was \$60,655.90?

A. That was just the items I *dead*. The total balance was \$61,924.02.

Q. And  $33\frac{1}{3}$  per cent depreciation on that would amount to what? A. \$20,641.34.

Mr. McGINN.—I cannot see the materiality of all of this, and I think it is merely incumbering the record.

The COURT.—I suppose it will be connected with other testimony. Proceed.

Mr RIDER.—Q. Now, will you turn to the profit and loss account of the corporation Fairbanks Banking Company as of date December 31, 1909, and tell me if any of these notes you have called off there are charged to that account on that date. Do you remember the amounts, and what ones?

Mr. McGINN.—We object to this testimony as irrelevant and immaterial. (Objection overruled. Defendants except.)

Mr. RIDER.—Q. What ones were charges off?

A. I have not the ledger of that account with me, but I have a memorandum here: Of the Barrett note there was \$8,407.58 charged off on December 31, 1909; of the Brazeau note of \$400, there was \$162 charges off; and of the Schaupp note of \$4,420.00, there was \$3,785.22 charged off. [226]

(Testimony of Sidney Stewart.)

Mr. McGINN.—Q. Have you got that Brazeau note?     A. Yes.

(Note handed to Mr. McGinn.)

Mr. RIDER.—Q. Have you there, Mr. Stewart, the Schaupp note referred to in your testimony as one of the notes that was charged off on December 31, 1907, and which was sold to the corporation on March 13th?     A. Yes.

Q. What is the date?     A. August 27, 1906.

Q. Have you another one? I want the one dated December 31st. (Note handed to Mr. Rider by Mr. Stewart.) Now, of the notes that were sold to the corporation, there is one note of \$1,245.81, signed by Fred Schaupp, dated December 31, 1907. Examine that doubtful account that you have before you and see if that note is included in the notes that are charged off on December 31, 1907, to doubtful account.     A. Yes, sir.

Mr. HEILIG.—Referring to the doubtful account of the partnership?

Mr. RIDER.—Of the partnership.

Q. Now, find the two Barrett notes. (Notes handed to Mr. Rider.) Now, I call your attention to a note signed by William Barrett, dated June 16, 1906, in the sum of \$16,950.63, payable to Fairbanks Banking Company. Is that note now in the hands of the receiver?     A. It is.

Q. Unpaid?

A. The balance of that note of \$8,400, the amount I just read, was charged to profit and loss.

Q. When that note was entered on the books of the

(Testimony of Sidney Stewart.)

partnership to their bills receivable account, how much did they charge bills receivable with for that note?   A. For \$16,950.63. [227]

Mr. RIDER.—(After consulting with witness.) I will withdraw reference to that last note at this time. There is a matter in connection with it that I thought I understood, but I find I don't.

Q. There is a charge in the complaint of an allowance of \$39,642.81 as accrued interest paid to the partnership. Directing your attention to that account, have you examined the notes turned over by the partnership to the corporation and on which this interest was computed to determine whether or not the corporation has collected on those notes all of that accrued interest?   A. I have.

Q. Has it been collected?

A. Not all of it. [228]

Q. Have you been able to determine from your computation what portion of that, if any, has never been collected?

A. I have not the book here with those figures on, but it is approximately \$7,500.00. [229]



# **Plaintiff's Exhibit "MM"—Notes Held by Receiver, April 1, 1914.]**

NOTES HELD BY RECEIVER—April 1, 1914.

		Date.	Maturity.	
2941	Auten, Geo. M. and Jackson			
	Frick .....	6- 3-09	9- 3-09	\$500.00
3053	Auten, Geo. M. and Jackson			
	Frick .....	8-14-09	1 day	100.
3349	Auten Geo. M.....	5-19-10	8-19-10	540.
3192	Auten & Frick.....	8-14-09	9-13-09	500.
2532	Acheson, John and J. A. Jes-			
	son .....	11-16-08	7-16-09	94.
1957	Anderson, Oscar M. et al. ....	9-12-07	Demand	125.
2902	“ Axel.....	5-18-09	6-18-09	136.57
2020	Altman, Max.....	9-24-07	6- 1-08	495.17
2362	Brumbaugh R. and H. C. Ham-			
	ilton .....	6-30-08	7-30-08	5,431.33
3355	Benbrook, S. L.....	5-23-10	Demand	2,500.
1587	Berger, D. H.....	11-27-06	7-28-07	550.
2323	Boarman, F. B.....	5-22-08	Demand	1,170.50
2384	Blodgett, Jas. and R. Shep-			
	hard .....	7-10-08	8-10-08	1,700.
3094	Browne, T. C.....	9-17-09	3-17-10	502.
3758	Barrette, Wm.....	11- 1-10	Demand	206.
1975	“ “ .....	8- 1-07	2- 1-08	8,809.21
3788	“ “ .....	1-31-14	Demand	9.
2702	Baird, John F.....	2-15-09	7- 1-09	350.
3733	Clark, W. S.....	12-14-10	Demand	2,200.00
3734	Clark, W. S.....	“	“	5,000.
3735	“ “ .....	“	“	5,000.
3736	“ “ .....	“	“	5,000.
3737	“ “ .....	“	“	5,000.00
3738	“ “ .....	“	“	5,000.
3410	Courtmanche, Dave .....	7-12-10	8-12-10	300.
3775	“ “ .....	9-15-11	Demand	123.12
3002	Claypool, E. E.....	7-13-09	1-13-10	1,158.14
3455	“ “ .....	6-24-09	12-24-09	1,557.00
2382	“ “ .....	7-09-08	8- 1-08	5,175.00
2203	Collins, John.....	2- 8-08	7- 1-08	147.50

Forward.....59,379.54

		Date.	Maturity.	
280	Casey, Wm. and A. C. Saylor.	3-31-05	5-31-05	40.00
2533	Chute, J. A. and E. J. Stier..	11-16-08	8- 1-09	9,250.
2882	Crana, A. S.....	5- 7-09	6- 7-09	40.00
2639	" " and E. A.....	1-25-09	5-25-09	20.
2640	" " " " .....	1-25-09	"	400.
2470	Christian, John et al.....	10-14-08	6- 1-09	2,785.00
2805	" " " " .....	3-09-09	5- 8-09	520.
2779	" " " " .....	2-24-09	5-25-09	530.
2725	" " " " .....	2-09-09	5- 9-09	530.
2628	" " " " .....	1- 4-09	6- 1-09	1,598.75
2911	" " " " .....	4-15-09	Demand	200.
3450	L. T. Erwin.....	8-11-10	12- 1-10	2,410.
2595	Erickson, Axel.....	12-29-09	5-29-09	16.
2724	" " and Erik John- son .....	2-23-09	5-12-09	2,000.
2885	Erickson & Company.....	4- 7-09	5- 7-09	408.
3076	" " " Memo. ....	9- 2-09	Demand	30.
1861	Fairburn & Kerler.....	5- 1-07	7-15-07	300.
1883	Fairburn, Kerler & Verboone.	1-25-07	7- 1-07	1,032.00
1591	Gelling & Bechtolt.....	11-24-06	9-15-07	1,050.00
2970	Garvin, Andy .....	5- 3-09	6- 2-09	111.97
3284	Hoyt, Romeo N.....	3-30-10	8- 1-10	25.
3423	Hedman, John .....	3- 4-10	4- 4-10	99.13
3230	" " .....	2-14-10	3- 1-10	95.67
B119	Heacock, E. J.....	8- 5-10	check	70.
3364	" " .....	5-28-10	7- 1-10	100.
2954	Himes, Wm. H.....	4-27-09	6- 1-09	126.90
2380	Jonas, D. H.....	7- 7-08	8- 7-08	3,705.96
3016	" " .....	7-10-09	11-15-09	3,000.
3017	" " .....	"	1- 1-10	2,000.
2511	Jonas & Brown.....	10-27-08	6-27-09	1,851.33
Forward.....				93,725.25

		Date.	Maturity.	
1548	James, Wm. ....	11- 7-06	6-15-07	311.97
2726	Johnston, Harry R. ....	2-24-09	5-24-09	1,200.
3070	“ Chas. and D. C. Mears	6-10-09	9- 8-09	530.
	Johnson, Erik et al., #2501...	11- 9-08	6- 9-09	310.
3153	Jackson, J. A. ....	11-13-09	Demand	333.71
3424	“ “ ....	7-27-10	“	750.00
2626	Jesson, J. A. ....	1-18-09	7- 1-09	500.
2762	“ “ ....	3- 9-09	“	500.
2541	“ “ ....	11-24-08	“	1,000.
2728	“ “ and J. H. Sutton..	2-24-09	8- 1-09	150.
2022	Kellogg, Chas. W. ....	9-19-07	5- 1-08	625.
3385	Knudson, C. S. ....	6-13-10	7-13-10	200.
3103	Keys, E. M. ....	9-20-09	11-20-09	2,400.
2464	Kellett, P. R. and J. F. Monk-			
	man ....	10-24-08	5-24-09	906.30
2558	Kelley, James ....	10-24-08	6- 1-09	4,928.24
2718	Kovaich, Tom ....	2-10-09	7-24-09	685.
2887	“ “ ....	4- 7-09	6- 6-09	113.
3001	“ “ ....	5-14-09	7-13-09	31.50
2651	Lappi, John, Erik Orne, F. O.			
	Illberg .....	1-18-09	6- 1-09	957.76
3477	Lavine, Alfred et al. ....	4- 8-10	6- 8-10	261.57
3315	Lind, E. C. ....	11- 3-09	6- 1-10	1,322.96
3624	“ “ and Sam Lind. ....	9-26-10	Demand	3,100.
3723	“ Sam ....	12- 8-10	“	100.
1632	Larson, Alex. ....	12-24-06	1-24-07	354.35
3199	Loomis, I. H. and W. S. Clark.	1-14-10	4-14-10	700.
2667	Myers, R. R. ....	2- 4-09	6- 4-09	1,000.
3215	“ “ ....	8-26-09	Demand	156.68
3411	Morgan, James T. ....	2-17-10	5-17-10	106.
2990	“ W. B. ....	7- 3-09	7- 4-09	80.
3162	Miller, H. I. ....	7-28-09	Demand	1,546.00
Forward. ....				118,885.29

		Date.	Maturity.	
2129	Maddocks, Monkman & Kel-			
	lett .....	12- 5-07	6- 1-08	648.99
3729	Martin, Geo. et al.....	12- 8-10	5-15-11	346.30
3635	MacCormack, J. W.....	10- 6-10	6- 1-11	690.
3636	McDonald, Chas. ....	10- 6-10	Demand	350.
3769	" Rod.....	1- 3-11	"	113.56
3216	McCray, H. W. and Andy Gar-			
	vin .....	2- 3-10	3-15-10	236.
3632	McCray, Van Winkle and			
	Soreboe .....	10- 5-10	5- 1-11	1,940.00
3697	McNeer, A. H.....	11-14-10	6- 1-11	220.00
2490	" " .....	11- 6-08	1- 5-09	726.56
2556	" " .....	11-25-08	1-25-09	1,592.33
2960	McIlroy, S. D.....	6-15-09	8- 1-09	96.28
3146	MacArthur, A. ....	5-17-09	6-17-09	126.
3527	McCain, J. N.....	5-17-10	Demand	275.
3407	" " .....	2-14-10	6- 1-10	105.
2369	McMullen Bros. ....	7- 1-08	8- 1-08	1,000.
3415	Nelson, H. and F. P. Jorgen-			
	son .....	2-25-10	5-25-10	595.48
3564	Nelson & Jorgenson.....	7- 8-10	Demand	455.77
3500	" " " .....	4-22-10	7- 1-10	250.
3357	Nordale, A. J.....	5-23-10	7-23-10	1,295.79
2116	News Pub. Co. memo.....	2-26-08	Demand	56.93
3258	Ott, Phil and J. F. Shropshire.	10- 4-09	8- 4-10	203.50
3618	Olson, Osmund .....	9-26-10	Demand	2,240.
3498	Peterson, Nels .....	4-22-10	5-22-10	150.00
2465	" " .....	10-24-08	5-24-09	1,251.63
2466	" " Admr.....	"	"	1,691.62
3450	Pearson, Tom .....	3-23-10	6-15-10	515.
3605	" " .....	9- 2-10	Demand	761.30
2882	Perrault, G. A. and Henry			
	Raeder .....	4- 5-09	6- 4-09	2,080.
3761	Phillips, C. A.....	12-30-10	Demand	50.

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Forward.....138,948.33

		Date.	Maturity.	
2552	Pamical, M. et al.....	12- 9-08	6- 9-09	1,526.43
3432	Patterson, Dave and L. T. Erwin .....	8- 1-10	11- 1-10	30.00
3678	Robinson, C. J.....	11- 3-10	Demand	1,321.71
3679	" " .....	"	"	250.
2391	" " .....	7-14-08	8-19-08	2,956.00
3358	Robe, L. S.....	5-23-10	9-23-10	300.
3075	" " .....	8-31-09	2-28-10	500.
3000	" " .....	7-13-09	4-13-10	256.50
2761	Ruppa, Adolph .....	3- 9-09	6-20-09	3,300.
2945	" " .....	6- 3-09	8- 3-09	900.
2579	" " .....	11-30-08	6- 1-09	4,837.00
2834	Smith, Geo. and A. F. Fisher..	3-19-09	5-18-09	112.92
2731	" " et al.....	2-11-09	5-15-09	209.36
3435	Spring, Abe .....	8- 2-10	10- 1-10	150.
2614	" " memo.....	1-11-09	—	621.13
2946	Scan, Amer. Bank dft. memo..	6- 3-09	—	575.
2877	Struthers, J. F.....	5- 3-09	7- 3-09	100.
3084	" " .....	6-17-09	8-16-09	208.
3212	Siebe, H. R. and R. R. Myers.	8-24-09	Demand	2,214.66
3211	" " .....	"	"	1,337.50
3210	" " .....	"	"	543.33
3209	" " .....	"	"	563.
2848	Sala, Joseph .....	4-15-09	5-15-09	500.
2449	" " et al.....	10- 5-08	5- 5-09	2,850.00
3257	" " et al.....	9-30-09	5- 1-10	890.
2857	Tharp, G. M. and E. M. Rusk..	4-20-09	6-20-09	801.00
3772	Tharp & Rusk, Memo.....	4- 3-11	Demand	33.75
3783	" " " .....	1-16-13	—	25.50
1982	Tanana Trading Co. et al.....	9-23-07	6- 1-08	2,175.82

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Forward.....169,036.94



		Date.	Maturity.	
1899	Tanana Electric Co.....	7- 1-07	Demand	2,600.00
2080	" " .....	11-15-07	12-16-07	25,397.38
358	Timmerman, memo. ....	5-17-05	———	105.00
2755	Thurston, T. L.....	3- 6-09	9- 6-09	292.55
1583	Truitt, D. W.....	11-25-06	9- 1-07	1,000.00
2366	Tackstrom, O. E.....	7- 1-08	8- 1-08	346.96
3392	Verneti, John et al.....	2- 1-10	6- 1-10	960.
2959	" Dom, et al. ....	4-26-09	Demand	100.00
3413	Van Winkle, R. J.....	2-23-10	5-23-10	200.00
1993	Waters, Emily A.....	9- 5-07	12- 5-07	40.00
2417	Wing, L. E.....	7-13-08	Demand	150.00
2703	Williams, T. J. and J. W.			
	Brown .....	2-15-09	6-15-09	100.
2767	Williams, J. A.....	3- 2-09	5- 1-09	150.
1778	" " .....	5-24-07	Demand	3,307.83
3174	" Mrs. J. A.....	8- 4-09	10- 3-09	104.
3026	Wooldridge, T. E. and Mc-			
	Namee .....	5-24-09	7-23-09	19.
3521	Whelan, C. R. ....	5-11-10	6- 1-10	16.00
2550	Wiseman, F. C. and R. L.			
	Barelay .....	11-30-08	5-30-09	1,543.57
2716	Walker, F. B.....	2-10-09	5-11-09	1,000.
2506	" F. B. and C. G.....	11-11-08	6-11-09	878.75
3391	White, Carl and G. Gaidos....	2- 1-10	4- 1-10	205.00
216	York, J. A.....	2- 1-05	1 day	100.
260	" " .....	3-15-05	6-15-05	206.00
1835	" " .....	10-14-04	———	100.
2963	" " memo.....	6-16-09	———	20.00
3549	Zimmerman, J. F.....	6-13-10	8-13-10	100.
3479	" " and C. W.			
	Porter .....	4-12-10	6-12-10	500.00
Forward.....				\$208,578.98

## NOTES. In Judgment.

Case No.	Against Whom.	Amt. Note.	Judgment.
1301	Ensor & Griffiths.....	\$435.00	\$1,040.42
1720	T. Jestland .....	600.00	789.00
1725	Chamberlain & Curry.....	1,001.30	1,245.20
1666	Anderson, W. M.....	525.00	564.34
1708	Gilles et al.....	1,530.00	1,866.50
1719	Erickson & Johnson.....	972.38	1,608.64
1721	Bostrom & Erickson.....	2,669.37	3,713.45
1718	Arnell, J. C.....	1,134.37	1,501.12
1703	M. F. Hall.....	1,000.	1,160.00
1724	Vedin, G. A....	2,181.13	3,226.13
1746	Stone & Brandt.....	999.75	1,289.64
1857	Howe, E. D.....	457.25	935.28
1825-6	Clark, W. Sam.....	4,939.60	6,910.26
1832	Garvin, Simonson & McCray.....	6,698.91	10,100.95
		<hr/>	<hr/>
		25,144.06	35,950.93
	Credit acct. Vedin....	3,500.00	3,500.00
		<hr/>	<hr/>
	Total.....	\$21,644.06	32,450.93

[Endorsed]: Notes Held by Receiver April 8th, 1914. #1756. Pliffs.  
 Ex. "MM." Filed in the District Court, Territory of Alaska, 4th Div.  
 Apr. 25, 1914. Angus McBride, Clerk. By P. R. Wagner, Deputy.  
 [236]

Mr. RIDER.—Now, the testimony of Carl M. Johansen. (Reads the deposition of Carl M. Johansen.) [237]

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[Title of Court and Cause.]

**Depositions on Behalf of Plaintiff.**

Depositions taken in the above-entitled causes on behalf of the plaintiff, pursuant to stipulation and notice in accordance therewith heretofore given, O. L. Rider, Esq., appearing as attorney for plaintiff and John L. McGinn, Esq., appearing as attorney for defendants R. C. Wood, James W. Hill and John L. McGinn, and also acting pursuant to stipulation as attorney in behalf of all the remaining defendants who are represented by McGowan & Clark as their attorneys of record.

It further appearing that John P. Garvin, a Notary Public in and for the State of Washington, at Seattle, before whom notice was given for the taking of these depositions, is absent from the city of Seattle and unable to be present on this day, it is agreed between the said attorneys that said depositions may be taken before N. W. Bolster, a Notary Public in and for the State of Washington, residing at Seattle, and the same may be used in all respects the same as though taken before the said John P. Garvin. Said depositions were therefore taken at Room 661, Colman Building, in the city of Seattle, commencing at 10:00 o'clock A. M. on the second day of March, 1914. [238]

BE IT REMEMBERED, that pursuant to the

above stipulation and agreement entered into between counsel prior to the taking of said depositions, and pursuant to the stipulation and notice hereunto annexed, at the time and place therein mentioned, before me, N. W. Bolster, a Notary Public in and for the State of Washington, duly commissioned to administer oaths, etc., etc., personally appeared W. G. Cassels and Carl M. Johanson, witnesses produced on behalf of the plaintiff in the above-entitled suit now pending in said court, who being by me first duly sworn, were then and there examined and interrogated by O. L. Rider, Esq., of counsel for said plaintiff and by John L. McGinn, Esq., of counsel for said defendants, and testified as follows:

[Title of Court and Cause.]

### **Depositions on Behalf of Plaintiff.**

Depositions taken in the above-entitled causes on behalf of the plaintiff, pursuant to stipulation and notice in accordance therewith heretofore given, O. L. Rider, Esq., appearing as attorney for plaintiff and John L. McGinn, Esq., appearing as attorney for defendants R. C. Wood, James W. Hill and John L. McGinn, and also acting pursuant to stipulation as attorney in behalf of all the remaining defendants who are represented by McGowan & Clark as their attorneys of record.

It further appearing that John P. Garvin, a Notary Public in and for the State of Washington, at Seattle, before whom notice was given for the taking of these depositions, is absent from the city of Seattle and unable to be present on this day, it is agreed between the said attorneys that said depo-

sitions may be taken before N. W. Bolster, a notary public in and for the State of Washington, residing at [1] Seattle, and the same may be used in all respects the same as though taken before the said John P. Garvin. Said depositions were therefore taken at Room 661, Colman Building, in the city of Seattle, commencing at 10:00 o'clock A. M. on the second day of March, 1914.

BE IT REMEMBERED, that pursuant to the above stipulation and agreement entered into between counsel prior to the taking of said depositions, and pursuant to the stipulation and notice hereunto annexed, at the time and place therein mentioned, before me, N. W. Bolster, a notary public in and for the State of Washington, duly commissioned to administer oaths, etc., etc., personally appeared W. G. Cassels and Carl M. Johanson, witnesses produced on behalf of the plaintiff in the above-entitled suit now pending in said court, who being by me first duly sworn were then and there examined and interrogated by O. L. Rider, Esq., of counsel for said plaintiff, and by John L. McGinn, Esq., of counsel for said defendants, and testified as follows:

**[Deposition of W. G. Cassels, for Plaintiff.]**

W. G. CASSELS, produced as a witness on behalf of plaintiff, being first duly sworn, testifies as follows:

Q. (Mr. RIDER.)—You may state your name.

A. W. G. Cassels.

Q. Where do you live?

A. I live in Seattle, Washington.

Q. Did you ever live in Fairbanks, Alaska?



(Deposition of W. G. Cassels.)

A. I have. [2]

Q. Were you living at Fairbanks, Alaska, at the time a certain partnership known as the Fairbanks Banking Company, consisting of E. T. Barnette, James W. Hill and R. C. Wood, were doing a banking business in Fairbanks? A. I was.

Q. Were you acquainted with the members of that partnership? A. I was.

Q. And were you acquainted with the bank which they conducted under the name of the Fairbanks Banking Company?

A. Acquainted as one doing business with it, yes.

Q. It appears from the records of that bank that you, with certain others, were appointed a board of trustees to examine into the affairs of the said Fairbanks Banking Company some time in December, 1907; do you recall that appointment? A. I do.

Q. And do you remember who the other members of that board were?

A. I don't understand that it was a board of trustees, though. It was a board appointed from the depositors of the Fairbanks Banking Company, a committee.

Mr. McGINN.—They were designated as a board.

Mr. RIDER.—They styled themselves as a committee in their report.

Mr. McGINN.—Maybe, but they are spoken of in the minutes as a board.

The WITNESS.—I knew it as a committee.

Q. (Mr. RIDER.) Do you remember who the other members of that committee were, Doctor?

(Deposition of W. G. Cassels.)

A. Yes, sir; Col. C. E. Claypool, Daniel H. Jonas, Dan Ryan, [3] George Preston and myself.

Q. By whom were you appointed as such committee, Doctor?

A. By a general meeting called of the depositors in the courthouse and we were the five names selected, among several names that were nominated at that meeting.

Q. What was the purpose of your appointment as such committee?

A. To confer with the officers of the bank in regard to the failure, or the closing of the doors, and to report back at a subsequent meeting the conditions as we saw them in the bank.

Q. The bank which you refer to is the Fairbanks Banking Company, a partnership.

A. The Fairbanks Banking Company, I think that was the name—it changed the name so often that I don't remember.

Q. Did you or your committee take charge of the assets of that bank, the Fairbanks Banking Company?

A. Well, that question is asked in such a way that I could not very well answer it.

Q. Just state what your committee did.

A. The committee met and organized and engaged a stenographer, a Mr. Miller of Chena; he had been a former bank examiner I understood, and we went into convention and met with the bank officers, looking over their assets and liabilities, and later reported to a subsequent meeting of the depositors.

(Deposition of W. G. Cassels.)

Q. For what purpose were you looking into the assets and liabilities of the bank?

A. In regard to whether we felt that they were able to pay the amount of the deposits in the bank, as they had [4] previously closed their doors about forty-eight hours before.

Q. Did your committee make an inspection of the notes then held by the bank? A. They did.

Q. There appears among the files of the bank what purports to be a typewritten report of your committee, but which report as found in the files is not signed by your committee; do you remember whether or not there was a report prepared and signed?

A. There was a report prepared and signed, as I remember it.

Q. In your report there is noted among the resources of the bank an item of loans and discounts \$427,251.26; did you have the notes before you which made up that item of loans and discounts in your investigation?

A. I believe we did. We had the notes and what security was there was presented at the time.

Q. Do you remember whether or not among those notes was one signed by the Tanana Electric Company, in the sum of \$27,997.38.

A. I do not remember the amount, but I remember there was one against the Tanana Electric Company.

Q. And do you remember that it was approximately in that amount?

(Deposition of W. G. Cassels.)

A. I could not say the amount; it was several years ago.

Q. Do you remember whether or not there was more than one note of the Tanana Electric Company? A. I could not say that.

Mr. RIDER.—You do not question, Mr. McGinn, but what that was the amount of the note, do you? [5]

Mr. MCGINN.—Really, I do not know.

Mr. RIDER.—I just want to identify that note.

Mr. MCGINN.—I think there was only one, that is my recollection of it, but I do not know just what the amount of it was—I do not pretend to say now.

Q. (Mr. RIDER.) Were you acquainted with the affairs of the Tanana Electric Company at that time. December, 1907?

A. Now, that word “acquainted”—sufficiently acquainted with it that when solicited, I did not want any stock in it.

Q. Were you sufficiently acquainted with it to know the value of its paper at that time?

A. No; I think I had an opinion though in regard to its paper at that time.

Q. Had you been in business in Fairbanks, Alaska, prior to the time you went into this committee? A. Yes, sir.

Q. For how long? A. Three years.

Q. And what was the nature of your business?

A. Physician and surgeon.

Q. And were you acquainted generally with the financial standing of the people in that community?

(Deposition of W. G. Cassels.)

A. As a physician would be, yes?

Q. Did you regard the note of the Tanana Electric Company which was examined by you and reported on, as of value?

Mr. McGINN.—To which we object on the ground that it is irrelevant, immaterial and incompetent, and the issue involved is not as to the value of the note of the Tanana Electric Company on December 16, 1907, and [6] furthermore that the witness has not qualified as an expert to pass upon the value of the note of the Tanana Electric Company, because it has not been shown that he knew what the assets or liabilities of that institution was in any way, and because it is evident that his information would come to him in the way of rumors and by hearsay, and the further objection that the opinion of this witness is immaterial.

A. Not of value as regards the paper of the electric company, but a letter was presented at that time by the bank which convinced me that the advances to the electric company had been authorized by the Scandinavian-American Bank of Seattle, and it was really their credit that was in question.

Q. By whom was this letter presented, Doctor?

A. I believe that the letter was presented by Mr. Dusenbury, or Mr. Hill, but I believe by Mr. Hill—those were the only two that handled the papers.

Q. Was any investigation made by your committee to determine the value of the Tanana Electric Company note?

A. There was some discussion by the committee.



(Deposition of W. G. Cassels.)

It was, as I remember, referred to Mr. Claypool as the only attorney sitting at the board, and he believed that the letter or papers presented by the bank was sufficient to hold the Scandinavian-American Bank as security for the debt.

Q. Did he make that representation to the committee?

A. He did, so far as I was concerned; that was my belief at the time.

Q. I mean, did he make that statement to you?

A. He did, as I remember it. [7]

Q. Is he the same Claypool who subsequently became a director of the Fairbanks Banking Company, a corporation?      A. I don't know.

Mr. McGINN.—I will admit that he is the same.

Q. (Mr. RIDER.) What was it that induced you, as a member of that committee, to report the Tanana Electric Company's note in the amount that you did report it, as a resource of the bank?

A. Because I believed that it was secured by the Scandinavian-American Bank of Seattle.

Q. Do you remember whether or not a note of William Barrett was presented to you or to your committee at the time of that investigation?

A. I believe it was.

Q. Do you remember the amount of that note?

A. I do not.

Q. Do you remember whether or not it was in a large sum?

A. I could not say; I think I remember something about it, but I do not remember the amount.

(Deposition of W. G. Cassels.)

Q. What is your recollection of the amount?

A. I would not attempt to put the amount on it.

Q. I find listed among the notes that were submitted to your committee a note of William Barrett in the sum of \$37,008.33—

Mr. McGINN.—That must be the wrong amount—I think it should be \$8,000.

The WITNESS.—I think that is certainly a mistake—that can't be the right amount.

Mr. RIDER.—You do not recall the amount, though? A. I do not recall the amount. [8]

Q. Well, there was a note of William Barrett examined by the committee. A. Yes.

Q. Were you acquainted with the financial standing of William Barrett at that time?

A. In a general way, yes.

Q. Did you regard his note as of value?

A. Yes, because it was secured by an insurance that was made in favor of the Fairbanks Banking Company, because of a fire that had burned, and besides that it was secured by the property, I think, on Third Avenue.

Q. Without such security, would you have regarded his note as worth par?

A. I do not consider any man's note good without security.

Q. That does not answer my question as to this particular note.

A. I can't answer it any different. I would not take any man's note personally that was not secured.

Q. What was the reason that induced you to report

(Deposition of W. G. Cassels.)

the Barrett note, and to include it among the resources of the bank?

A. Because we thought the security was ample for the amount that we gave him credit for, and if we gave him credit for the whole of the note we believed the security at that time was ample to cover that.

Q. Was the attention of the committee called to the fact that a great many of the notes held by the Fairbanks Banking Company partnership were past due at the time you were making your examination?

A. Yes, but the committee understands that all notes are [9] usually past due in Fairbanks at that time of the year.

Q. Was your attention called to the fact that some of the notes were past due as much as two years?

A. No, I do not remember that that was.

Q. Was your attention called to the fact that—

Mr. McGINN.—We object to this as leading—let the witness state what was done.

Q. (Mr. RIDER.) Was your attention called to the fact that as much as \$53,000 of the paper that was presented to you was past due, ranging from a few months to three years?

Mr. McGINN.—I object to that as irrelevant, immaterial and incompetent; what the committee did and what they reported is the issue here and not what was shown them or not shown them at that time.

A. I do not think it was presented in that light. The committee knew when the notes were drawn. The notes were read to the committee and the security that was on it.

(Deposition of W. G. Cassels.)

Q. (Mr. RIDER.) Referring to the note of William Barrett, was your attention called to the fact that that note was past due for nearly eighteen months?

A. I don't think it was. I don't think the note was taken into consideration,—it was the security that was taken into consideration, as I remember it.

Q. Do you remember a note of Gelling & Bechtolt?

A. I do not remember the note.

Q. Were you acquainted with Gelling and Bechtolt at that time? A. No, I don't remember them.

Q. Did you know William Casey? [10]

A. Yes, sir.

Q. Do you remember a note of his in the sum of forty dollars?

A. I don't remember it, but I believe if it was there it was good.

Q. Was your attention called to the fact that the William Casey note had been due since May 31, 1905, at the time you gave your report on it?

A. It may have been reported to us that way—the note was read, but I do not remember any individual note of forty dollars—this is seven years ago.

Q. Would you have regarded his note, which had been due since 1905, as a valuable asset of the bank?

A. I certainly would.

Q. Although past due for this length of time?

A. Yes. If this refers to Casey who kept the Northern saloon, there is no question in my mind but that that was a valuable asset. There must be some mistake about that, because Casey is absolutely

(Deposition of W. G. Cassels.)

good—there must have been some dispute about it, or he would have paid it.

Q. Do you remember a note of Ensore and Griffiths?

A. I do not remember the note or the people.

Q. Do you remember a note of Fairborn and others?

A. I don't remember the note; I remember Mr. Dave Fairborn.

Q. Do you remember the amount of that note?

A. No, I do not.

Q. Do you remember the *a* note signed by Fairborn, Kerler and others in the sum of \$2,000?

A. I don't remember the note. I think I remember their name being presented to the committee, but I don't remember [11] the amount.

Q. I don't care to go down through the entire list—the two notes I principally care to inquire about are the Tanana Electric Company note and the note of Barrett.

A. Well, I could not remember those other notes.

Q. Did you know, or was it made known to your committee that any of the notes examined by you had been charged off by the partnership known as the Fairbanks Banking Company, to profit and loss prior to the time that they were submitted to you for examination?

A. No. It was not known to the committee.

Q. Was the Mr. Jonas who was on your committee the same D. H. Jonas who afterwards became a director of the Fairbanks Banking Company, a cor-



(Deposition of W. G. Cassels.)

poration? A. I believe it was the same.

Mr. McGINN.—We admit it was the same.

Q. (Mr. RIDER.) And the Dan Ryan that was on your committee was the same Dan Ryan that subsequently became a director?

A. I believe so, and also George Preston, he became a director too.

Q. You also were elected a director, were you not, Doctor?

A. I don't know. I was told I was, but I do not know of my own personal knowledge.

Q. Did you ever qualify as a director?

A. No, I did not.

Q. Did you ever take stock in the bank as reorganized?

Mr. McGINN.—We object to that as wholly immaterial.

Q. (Mr. RIDER.) Do you remember?

A. I should say, yes, with some explanation to it. I believe L. T. Irwin signed for one thousand dollars worth of [12] stock, signing notes for the same in my name. This was, I understand, to qualify as a director for the new corporation, my name having been suggested as a director without my knowledge or consent. Later I sold the same stock, through Mr. James Hill to, I believe it was Mrs. Claypool. A few months later I became in possession of one share of stock which I afterwards sold to Mr. L. T. Irwin. The only thing I ever saw was the note.

Q. Did you ever qualify as a director?

A. I did not.

(Deposition of W. G. Cassels.)

Q. Did you decline to do so?      A. Yes.

Q. At the time that the affairs of the bank were in the hands of your committee, was there any other security held by your committee in addition to the securities owned by the bank?

A. The private mining property and property in Fairbanks of Mr. E. T. Barnette and his wife, and also some properties on Dome Creek that he had powers of attorney for, was held by the committee until the bank was able to redeem all the scrip and pay its indebtedness.

Q. When, if you know, were those private securities surrendered to Mr. Barnette?

A. They were surrendered to Mr. Barnette at the retirement of the script.

Q. And during the time that you were on the committee?

A. Yes. Between those times there was a reorganization of the bank, with which I had nothing to do.

Q. Were the private securities returned to Mr. Barnette [13] prior to the reorganization of the bank?

A. They were returned at the retirement of the scrip.

Q. Was that after you retired from the committee?

A. Our committee had still to hold, because this was made to the committee.

Q. Do you remember when your committee was discharged?

(Deposition of W. G. Cassels.)

A. They were discharged at the retirement of the scrip.

Q. Do you remember when that was, about the date?

A. It was in the spring of 1908, but I do not know what month; my recollection was that it was in August. I know it was after the gold-dust came in. I know the question came up when the gold-dust came in, the question was whether it should go to the bank or should go to the committee, and I know I had a little fuss about that—you see I was the only one of the committee that was not a director in the new organization, so I held that the gold should go to the committee until they were able to call in all the scrip, and at about that time that that transaction was made, they called in their scrip and the committee was discharged.

Q. At any time during the service of your committee, was the question considered by your committee of the value of the assets of the bank, for the purpose of a sale or purchase of the same, considered by the committee?      A. No.

Cross-examination.

Q. (Mr. McGINN.) Doctor, Charles E. Claypool is now a superior judge of the State of Washington?

A. That is what he told me the other day. [14]

Q. How long had you known him prior to December, 1907?      A. 1904—I think it was in 1904.

Q. You also knew Dan Jonas prior to December, 1907?      A. Yes, sir.

Q. How long had you known him?

(Deposition of W. G. Cassels.)

A. Since 1904, three years.

Q. You also knew Dan Ryan?

A. About the same time.

Q. And George Preston?

A. About the same time.

Q. You knew the standing of those men in the community, in Fairbanks?      A. Yes, sir.

Q. I will ask you to state what it was.      A. Good.

Q. I will ask you to state whether or not they were considered sound, careful, conservative business men.

A. I think so—they were so considered by the depositors, I think, or they would not have been chosen.

Q. I will ask you to state whether or not the committee in going over the notes and loans and discounts of the bank, did so carefully and scrutinized each individual paper.

A. Yes, sir; carefully, so far as they were concerned—carefully for the objects that they had in view.

Q. And they were acting entirely for the benefit of the depositors of the institution?

A. Yes, with that in view.

Q. And acted honestly and to the best of their ability, in your opinion? [15]

A. I believe they did. The object, of course, in view, was, of course, only to give the depositors information in regard to the condition of the bank.

Q. And after they had carefully gone through all the affairs of the bank they made this report to the depositors didn't they (showing document to wit-

(Deposition of W. G. Cassels.)

ness). A. Yes, this looks like the report.

Mr. McGINN.—I suppose we can agree on this.

Mr. RIDER.—I don't think there is any question about it, if you are sure that it is the same.

Mr. McGINN.—I am sure it was—it was in my original papers.

The WITNESS.—I know the latter part of it is right, because we asked to have Mickey appointed as receiver, and I see that that is in there. I could not say that the exact figures are the same as the report, but if our signatures are on it, it is all right.

Mr. McGINN.—The only copies I have seen are unsigned; I never saw a signed copy, and that is the reason I cannot bring you anything you can identify. I will offer it in evidence, and ask that it be marked for identification.

Mr. RIDER.—I am willing that a copy of the report can be put in as soon as we can identify it as an exact copy.

(Copy marked "Ident. 1" and returned to counsel for defendants.)

Mr. McGINN.—I will ask that this document, on the front of which is printed "Report of the committee of depositors on the financial condition of the Fairbanks Banking Company, Fairbanks, Alaska, as of December 12, 1907," be marked as Defendants' Exhibit No. 2 for the purpose of identification.

(Document above identified is by the notary marked as requested and returned to counsel for defendants.) [16]

Q. (Mr. McGINN.) Doctor, I now show you a



(Deposition of W. G. Cassels.)

report which has been marked Defendant's Exhibit No. 2 for identification, and I will ask you to state whether or not this committee which has been spoken about made that report at the time that it is dated, that is upon the 21st day of December, 1907?

A. Now, I am willing to say that that is the same report, so far as I know, and there is one little clause which I would like to call attention to—here is a little clause to the effect that Captain E. T. Barnette, as president of the bank, declared to the meeting that he was ready to turn over his personal property, if necessary, in satisfaction of the bank's obligation. There is no question that I felt, as one of that committee, that I was influenced in giving as favorable an account of the Fairbanks Banking Company as I could conscientiously do so, because of the fact that not only was the bank secured by the assets which we thought possibly were ample, but again Captain E. T. Barnette put in the hands of this committee as much or even more than was in the assets of the bank, which had an influence in making me give as favorable report as possible.

Q. But, at the same time, you believe that that report was true or you would not sign it?     A. Yes.

Q. And you believe that the valuation which you put on the loans and discounts and other securities of the bank were true or you *were* not have made them?     A. Yes, sir; to the best of our knowledge.

Q. Did you believe Doctor that the depositors and people [17] that subsequently became stockholders of the Fairbanks Banking Company a cor-

(Deposition of W. G. Cassels.)

poration had a right to rely upon the statements contained in those two reports.

A. I believe they had.

Q. Doctor, you are not sure at this time as to what all the securities the bank held in regard to that Barnett note?

A. No. I remember that there was an insurance and the property, I remember that, but the other I do not remember.

Q. You regarded the note of the Tanana Electric Company good, on account of the guarantee which you supposed was in existence at that time.

A. I don't know *just disposition* was made of it, but at the time whatever disposition we did make of it was our best belief in the matter. I could not remember the details of it now.

Q. At that time there was no disposition on the part of Mr. Hill and Mr. Dusenbury to conceal anything? A. No.

Q. There was the utmost openness about the matter? A. Yes.

#### Redirect Examination.

Q. (Mr. RIDER.) Was the attention of your committee called at any time to the fact that the guarantee, or supposed liability of the Scandinavian-American Bank on the Tanana Electric Company note, had been repudiated by the bank?

A. No, just the reverse. [18]

Q. Did your committee make any investigation respecting the stock of the Gold Bar Lumber Company which was held by the partnership bank?

(Deposition of W. G. Cassels.)

A. Yes; there was a question came up as to the value of the Gold Bar Lumber Company.

Q. What investigation did you make respecting that, and what representations were made to you, if any?

A. There was some discussion by the committee. There was a difference of opinion in regard to the Gold Bar Lumber Company. Personally, I was willing to accept it at what they had paid for it, believing that the amount of the accrued profits had been expended on the property and *and* that the property was not worth any more than they had paid for it. Three others of the committee took an opposite view, and after considerable discussion it was put to a vote and the committee was in favor of increasing the value of the Gold Bar Lumber Company a certain amount. I don't remember just what.

Mr. McGINN.—Doctor, do you remember whether or not there was a report of the officers of the Gold Bar Lumber Company presented to the committee?

A. Yes, sir.

Q. Showing the assets and liabilities? A. Yes.

Q. And it was largely upon that that the committee acted?

A. No. I was willing to take that report, but the committee was willing to give them still more than that report, because when the report was presented I was willing as one to take it as it was represented by the officers of the bank. The others wanted to give them the benefit [19] increased price of timber out here, and increased stumpage and so on,

(Deposition of W. G. Cassels.)

that was figured at twenty-five cents increase on the stumpage, and Mr. Hill said that the accrued profits of the Gold Bar Lumber Company from the time they received that property, had been put on the property and he felt it was worth more than the report.

Q. Well, there was just a difference of opinion between you and some other members of the committee?     A. Yes.

Q. And the majority was in favor of turning it in for the amount of the debt?     A. Yes.

Q. And you feel, Doctor, that they acted honestly and to the best of their judgment in the matter.

A. I have no reason for feeling that they did not.

Q. It was a matter of judgment.

A. It was a matter of opinion.     [20]

State of Washington,

County of King,—ss.

I, N. W. Bolster, a notary public within and for said state, do hereby certify that on the second day of March, A. D. 1914, before me, as a notary public, the testimony of the foregoing witness W. G. Cassels and Carl M. Johanson, was taken pursuant to the notice and stipulation hereto attached; the said witnesses before testifying were by me first duly sworn to testify the truth, the whole truth and nothing but the truth; that I took such depositions accurately in shorthand and thereafter transcribed the same, and that the foregoing is a full, true and correct transcript of said shorthand notes; and I further certify that during the taking of the deposition

of W. G. Cassels two documents used in connection with the examination of said witness were by me marked for identification as exhibits "1" and "2," and returned to counsel for defendants; that during the examination of the witness Carl M. Johanson certain photographs identified by and used in the examination of said witness were by me marked as exhibits "1," "2," "3," and "4" to the deposition of Carl M. Johanson and the same are returned herewith as part of said deposition.

IN WITNESS WHEREOF I have hereunto set my hand and affixed my notarial seal this 3d day of March, A. D. 1914.

[Seal]

N. W. BOLSTER,

Notary Public in and for the State of Washington,  
Resident at Seattle.

Notary fees paid by Plaintiff \$36.75,

N. W. BOLSTER,

Notary. [21]

Fairbanks, Alaska, Dec. 16, 1907.

To the Depositors and Creditors of the Fairbanks,  
Banking Co.

Gentlemen:—

Your committee, appointed to investigate and examine into the affairs and conditions existing in connection with the closing and suspension of the Fairbanks Banking Co. beg to report as follows:

Your committee obtained the services of Mr. R. H. Miller and Mr. C. E. Taylor as expert accountants to accompany them in their investigations, and waited upon the officers of the Fairbanks Banking Co. at eight o'clock P. M. on Saturday Dec. 14, 1907.



(Deposition of W. G. Cassels.)

Dr. W. G. Cassels was elected chairman of said committee and Mr. C. E. Taylor was requested to act as secretary.

Mr. J. W. Hill, on behalf of the Banking Company presented to your committee a statement showing the financial condition of the bank as follows:—

Fairbanks, Dec. 11, 1907.

### RESOURCES.

Stocks .....	375,824.00	
Real Estate .....	27,339.65	
Loans & Discounts.....	427,251.26	
Overdrafts .....	49,366.38	
Due from Banks .....	4,142.67	
Cash & Dust on Hand.....	14,769.61	898,693.57

### LIABILITIES.

Due to Depositors.....	453,668.56	
Due to Banks .....	90,209.30	543,877.86
		<hr/>
Net Surplus..	354,815.71	

[22]

Mr. Hill, requested your committee to examine all books, vouchers, documents, and other evidence in the bank in support of said statement.

Your committee then proceeded to separately scrutinize all of the notes, mortgages, certificates and other resources set out in said statement.

The loans made by said bank were examined carefully by your committee, and were divided into three classes; First of which should consist of those considered by your committee as Gilt-edge Class 2

were those loans considered perfectly good, but which might be slow of collection.

Class 3, included those that might be considered doubtful.

The resources mentioned, were also segregated as follows: those secured by mortgage, and those unsecured, mention of which will further appear in this report.

Your committee adjourned at 1:25 A. M. Sunday, and convened again at 11 A. M. of the same day and again went into the consideration of the said resources of the bank.

Each item was taken up separately and was scrutinized by your committee and each of them, and was passed upon by a majority vote thereof, touching the face value of same. As a result of said investigation of said resources and securities, we beg to present for your consideration a statement showing the present financial condition of the Fairbanks Banking Co., based upon good, sound and what your committee deems reliable resources: to wit: [23]

### RESOURCES.

Stocks .....	353,949.00	
Real Estate .....	26,491.90	
Loans & Discounts		
No. 1 Secured	255,390.98	
2     “	40,134.03	
1 Unsecured	56,603.75	
2     “	44,373.20	396,501.96

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## Overdrafts.

No. 1	30,838.65	
2	5,763.80	36,602.45
Due from Banks . . . . .	4,142.67	
Cash & Dust on Hand . . . . .	14,769.61	832,457.59

## LIABILITIES.

Due to Depositors . . . . .	453,668.56	
Due to Banks . . . . .	90,209.30	543,877.73
		<hr/>
Net Surplus . . . . .	288,579.73	

The difference of \$66,235.44 between the statement of the bank as presented and the statement of your committee herewith consists of resources, which while of a doubtful character, may be of value, yet on behalf of all concerned were not so considered by your committee and were eliminated from the statement.

The above statement is based on actual face value of the resources and does not take into account nor include any interest that has accrued thereon.

Your committee would further report that the general obligations due from the business men of the City of Fairbanks and the mining men of the creeks are considered by this committee to be of a high class, and such as would be readily accepted by any conservative banking institution. [24]

Your committee proceeded to examine the books of accounts of said bank, and found the same apparently well and creditable kept, and a further examination into the individual accounts of the officers and staff of the said bank, disclosed the same to be normal, with no large or exceptional withdrawals

from the said bank, by either or any of them.

This investigation further disclosed the fact that at the close of navigation, a financial statement of the condition of the bank showed a cash resource of practically \$200,000.00, which said amount is considered by your committee, under ordinary circumstances to have been ample and sufficient to meet any and all usual demands of the said bank. Since that time, there has been a regular and steady withdrawal of funds by depositors, the same being most severe since the first day of November, 1907.

Your committee cannot too highly commend the manner and demeanor of the officers and staff of the said bank, who unreservedly threw open the bank, its books, papers and all its affairs to your committee, and showed a disposition to assist in the investigation in every way.

Capt. Barnette assured this committee, that, in addition to the above and foregoing statement of resources and securities, he would devote his entire property to the satisfaction of the creditors of the bank if found necessary.

Your committee found a few mortgages which had not yet been recorded, but which have since been recorded with the proper officer.

IN CONCLUSION, your committee would further set forth; that inasmuch as it is rumored that certain of the creditors of the bank may institute legal proceedings against the said bank at any time, with a view of establishing themselves as preferred creditors; and as such action would seriously militate against the best interests of all concerned, we

would recommend that the affairs of the bank [25] be placed in the hands of a reliable and responsible party to act as receiver of the said bank; That inasmuch as the affairs of the said bank have been carried on in a satisfactory manner, and that the suspension of the said bank is in nowise due to local mismanagement, we would suggest that the best interests of all parties herein would be subserved by the maintaining of the present staff of the said bank, and therefore recommend the appointment of either of the following gentlemen, to wit, Mr. B. R. Dusenbury or Mr. Duncan Michie be suggested to the Court as such receiver of said bank.

Respectfully submitted,

\_\_\_\_\_,  
\_\_\_\_\_,  
\_\_\_\_\_,  
\_\_\_\_\_,  
\_\_\_\_\_

Committee.

[Indorsed]: District Court 4th Judicial District, Alaska.

F. G. Noyes, vs. J. A. Jesson, #1756 and other cases being Nos. 1761, 1894 and 1905.

Exhibit No. 1, to the deposition of W. G. Cassels taken before N. W. Bolster, Notary at Seattle, March 2, 1914. N. W. Bolster, Notary. [26]



REPORT  
OF COMMITTEE OF DEPOSITORS  
on the  
FINANCIAL CONDITION  
of the  
FAIRBANKS BANKING COMPANY.  
Fairbanks, Alaska.

As December 12, 1907. [27]

Fairbanks, Alaska, December 21, 1907.

M.....

As a depositor and creditor of the Fairbanks Banking Company, you are entitled to be informed as to the present status of its affairs.

On December 12, 1907, owing to the unusual and continuous withdrawal of funds by depositors, brought about by the general feeling of unrest in financial circles all over the United States as well as in our community, the bank temporarily closed its doors. The officers of the bank at once called a meeting of its depositors and creditors at the courthouse in Fairbanks on Saturday, December 14, 1907, at which meeting a large number of depositors were present, all other persons being excluded, except the officers of the bank.

At this meeting the bank officers stated that the bank was in a perfectly solvent condition, and that the depositors would be paid every dollar due them and at the same time invited the creditors and depositors to cause an examination into the affairs of the institution.

This proposition was accepted and the depositors, by open ballot, then and there elected the following named gentlemen, to wit, Dr. W. G. Cassles, Mr. C. E. Claypool, Mr. Dan Ryan, Mr. George Preston, and Mr. D. H. Jonas, to act as a committee to examine into the affairs of the company, and gave the committee power to obtain expert assistance to further carry out said examination.

The committee obtained the services of two expert accountants and proceeded to examine the affairs of the bank, working thereon the greater part of Saturday night and all of Sunday, and reported back to a meeting of creditors on Monday, December 16, at 10 o'clock A. M.

The committee rendered their report, showing that they had carefully and thoroughly examined the resources and assets of the bank, and the liabilities thereof; that they had separately scrutinized each note, mortgage, and other document, covering the loans made by the bank; that they had set aside as of a doubtful character resources of the bank to the amount of over \$67,000.00, and that after such deduction the committee had found a net surplus of \$288,679.73, as shown by the [28] *the* statement prepared by said committee.

The committee also reported that the management of the bank was excellent, and commended the officers and employees for the manner in which they had thrown open the bank, vault, books, papers, and everything pertaining to its affairs for examination by the committee.

The report of the committee was favorably received

and the matter of appointing a receiver was discussed by the depositors and it was on motion decided, that if a receiver was necessary the name of James W. Hill should be presented to the Court as the unanimous choice of the meeting.

Captain E. T. Barnette, as president of the bank, declared to the meeting that he stood ready to turn over, if necessary, all of his personal property in satisfaction of the bank's obligations.

During the progress of the meeting, it was reported that the Washington-Alaska Bank and the First National Bank had decided to go on a clearing-house basis, and issue their own certificates instead of currency, whereupon it was suggested that the Fairbanks Banking Company could do likewise. On motion, duly made and seconded, the committee was requested to confer with the other banks with a view of entering into such an arrangement with them, and to report back to a meeting at 8 o'clock that evening.

Accordingly, at 8 o'clock, at the same place, the meeting reconvened, and the committee reported that they were unable to conclude arrangements with the other banks. The committee suggested that the Fairbanks Banking Company being in an excellent condition to do so, act independently, with the consent of its creditors, and proceed to issue certificates of its own, backed by the securities of the bank, and the further securities offered by Captain Barnette; and that the committee should work in harmony with and co-operate with the officers of the bank to the end that

the bank might resume business on a certificate basis.  
[29]

The committee met at the office of the bank on Wednesday, December 18, 1907, all the members thereof being present, together with the officers of the bank. After fully discussing the matter, it was then and there decided that the bank should turn over to the committee as trustees for the depositors and creditors all the resources, notes, and other securities already passed upon by the committee and that Captain Barnette should in like manner turn over to the committee, as such trustees, sufficient property to the satisfaction of the committee as to value, as would make the total resources and securities in the hands of the committee double the total of the liabilities of the bank to its creditors.

It was further decided at said meeting, that Mr. B. R. Dusenbury of Fairbanks, Alaska, be appointed register of the committee, and that all of the resources and securities be held by him, and in his personal possession as such register, subject to the action of the committee, and pending the final adjustment of the affairs of the bank.

The certificate or scrip of the bank will be in denominations similar to present currency and will be a promise to pay the bearer on or before August 1, 1908, certified on the back thereof by the trustees and register that they hold securities for said payment in double the amount called for on the certificate.

Under the circumstances the Fairbanks Banking Company, and Captain Barnette, having complied with the requests of the trustees in regard to said

securities, the bank will re-open its doors for the resumption of business on Monday, December 23, 1907, using certificates as above outlined in lieu of currency.

The work of the committee has been on behalf of and for the protection of the depositors. It has involved much time and labor, which each member has been glad to render for the good of all without remuneration. In all probability there is no record of a bank having closed its doors where the depositors acted in so sane and rational a [30] manner. Certainly no committee ever received more loyal support. We believe the final result will justify every action.

We earnestly request your hearty co-operation in the above plan, assuring you that we believe that these trying times of financial depression will soon be over.

Respectfully submitted,  
W. G. CASSELS, Chairman.  
DAN RYAN,  
D. H. JONAS,  
GEORGE PRESTON,  
C. E. CLAYPOOL,

Committee.

[Indorsed]: District Court, 4th Judicial District, Alaska. F. G. Noyes vs. J. A. Jesson, #1756, and other cases being Nos. 1761, 1894 and 1905. Exhibit No. 2 to the deposition of W. G. Cassels, taken before N. W. Bolster, Notary at Seattle, March 2, 1914. N. W. Bolster, Notary.



[Endorsed]: #1756, #1761, #1894, #1905. In the District Court for the Territory of Alaska, Fourth Judicial Division. F. G. Noyes, Receiver, Plaintiff, vs. J. A. Jesson et al., Defendants. F. G. Noyes, Receiver, Plaintiff, vs. John Zug et al., Defendants. F. G. Noyes, Receiver, Plaintiff, vs. R. C. Wood, Defendant. F. G. Noyes, Receiver, Plaintiff, vs. F. M. Hawkins et al., Defendants. Depositions of W. G. Cassels and Carl M. Johanson, witnesses in behalf of Plaintiff.

Filed in the District Court, Territory of Alaska, 4th Div. Apr. 22, 1914. Angus McBride, Clerk. By P. R. Wagner, Deputy. [31]

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*In the District Court for the District of Alaska.*

*Division No. 4, at Fairbanks, Alaska.*

United States of America,  
District of Alaska,  
Division No. 4,—ss.

**Certificate.**

I, J. E. Clark, Clerk of the District Court for the District of Alaska, Division No. 4, hereby certify that the foregoing and hereto attached thirty-one pages of typewritten matter, numbered from 1 to 31, both inclusive, constitute a full, true, and complete copy, and the whole thereof, of the original Deposition of W. G. CASSELS together with Exhibits Nos. 1 and 2, attached thereto, in the following cases, entitled, F. G. Noyes, Receiver, Plaintiff, vs. J. A. Jesson et al., Defendants (No. 1756), F. G. Noyes, Receiver, Plaintiff, vs. John Zug et al., Defendants (No. 1761), F. G. Noyes, Receiver, Plaintiff, vs. R. C. Wood, Defend-

ant (No. 1894), F. G. Noyes, Receiver, Plaintiff, vs. F. M. Hawkins et al., Defendants (No. 1905), as the same appears on file in my office.

IN WITNESS WHEREOF I have hereunto set my hand and the seal of the above-entitled court this 4th day of May, 1915.

[Seal]

J. E. CLARK,  
Clerk.

By Sidney Stewart, Deputy. [32]

[Endorsed]: Nos. 1756, 1761, 1894, 1905. In the District Court for the Territory of Alaska, Fourth Division. F. G. Noyes, Receiver, Plaintiff, vs. J. A. Jesson et al. (1756), John Zug et al. (1761), R. C. Wood (1894), F. M. Hawkins et al. (1905), Defendants. Certified Copy of Deposition of W. G. Cassels, together with Exhibits Nos. 1 and 2, Attached Thereto.

No. 2528. United States Circuit Court of Appeals for the Ninth Circuit. Filed Jun. 3, 1915. F. D. Monckton, Clerk.

**[Deposition of Carl M. Johanson, for Plaintiff.]**

CARL M. JOHANSON, produced as a witness on behalf of plaintiff, being first duly sworn, testifies as follows:

Q. (Mr. RIDER.) State your name.

A. Carl M. Johanson.

Q. Where do you live?

A. Seattle, Washington.

Q. What is your business?

A. I am in the investment, insurance, real estate and so forth.

(Deposition of Carl M. Johanson.)

Q. How long have you lived in Seattle and vicinity?

A. I have been out here on the coast since 1897; I have been permanently living in Seattle since 1907.

Q. 1907?      A. Yes.

Q. Have you been interested in the lumber business any?      A. Yes.

Q. To what extent and since when?

A. I have been in the lumber business since 1898.

Q. Are you acquainted with the property of the Gold Bar Lumber Company?

A. Well, I am acquainted with it.

Q. You have an interest in that? [239]

A. Yes.

Q. How much stock do you own?

A. One-fifth of the stock.

Q. When did you become interested in that company, Mr. Johanson?      A. In 1906.

Q. With whom?

A. With E. T. Barnette, J. W. Hill and R. C. Wood.

Q. At that time you acquired your one-fifth interest at the same time they acquired their four-fifths interest.      A. Yes.

Q. Were you acquainted with the property of this company in March, 1908?      A. Yes.

Q. You at that time had a one-fifth interest in it?

A. Yes, sir.

Q. Were you acquainted with the value of the property at that time?      A. Yes.

Q. And what it consisted of?      A. Pretty well.

(Deposition of Carl M. Johanson.)

Q. What was the value of the capital stock of the Gold Bar Lumber Company in March, 1908?

Mr. McGINN.—We object to that on the ground that the witness has not shown himself to be competent to testify, and that it is calling for the expression of his opinion as to the worth of the property, and that no proper foundation has been laid.

A. Well, the value of the capital stock in 1908, March, 1908, is somewhat a matter of opinion.

Q. (Mr. RIDER.) Well, have you an opinion?

A. Well, if I was to have sold Gold Bar at that time in March I was figuring on the basis of about the original purchase price plus interest from the time we bought to the time of selling. However, I would not state that to be the actual [240] value, because I was a minority stockholder and what I would have sold out for would not have probably fixed the value.

Q. It is not a question of what you would have sold out for—do you know what was the market value?

A. It had no market value. Stock of that sort has no market value, because it is not negotiated and sold or transferred.

Q. Had it any market value at all at that time?

A. It had a certain *market*, because you could sell it at a sacrifice, undoubtedly, but it had no market value.

Q. You were acquainted with the property owned by the Gold Bar Lumber Company at that time?

A. I was.

Q. And you know what that property was?

(Deposition of Carl M. Johanson.)

A. Yes.

Q. Are you acquainted with the value of that property owned by the Gold Bar Lumber Company at the time? I am asking you now for the value of the property?

Mr. McGINN.—We make the same objection, that the witness has not been shown to be competent to testify as to the value of Gold Bar, and that he is merely expressing his personal opinion.

Q. (Mr. RIDER.) What was the value of the property of the Gold Bar Lumber Company in March, 1908; that is, the fair, reasonable value to be placed upon that property?

A. I would add the original purchase price plus interest from the time it was bought up to that time, That is my opinion.

Q. Well, you can give me, in round numbers, what that would amount to?

A. Well, interest at six per cent on three hundred thousand dollars would be, for two years, would be thirty-six thousand dollars.

Q. And your estimate is that the purchase price plus the interest to that time would be its value.

A. That is as close as I can put the value on it, if it would [241] have any value. Of course, it might have a greater speculative value, and on a conservative investment it might have a less value.

Q. What is the purchase price you have in mind?

A. We paid three hundred thousand dollars for the property in May, 1906.

Q. Do you know whether or not the plant of the



(Deposition of Carl M. Johanson.)

Gold Bar Lumber Company was in operation in March, 1908?

A. I do not remember; no, the books will show that.

Q. Mr. Johanson, you remember being out on the property of the Gold Bar Lumber Company with myself and a photographer here in Seattle named Pearson one day last October.

A. I do not remember the man's name, but I was with you there with a photographer.

Q. At the time when some photographs were taken? A. Yes, sir.

Q. I wish you would examine these photographs which are marked plates numbered 1, 2, 3, 4, 5 and 6, and tell me if you can identify them as photographs of the Gold Bar Lumber Company grounds.

Mr. McGINN.—If you will state that they were taken there I am satisfied.

Mr. RIDER.—They were taken there.

Mr. McGINN.—Then I will admit that they were taken there.

(Photographs shown witness are marked for identification Plaintiff's Exhibits "1," "2," "3," and "4" to the deposition of Carl M. Johanson.)

Cross-examination.

Q. (Mr. McGINN.) I will ask you to refer to the exhibit marked Plaintiff's No. "1," and state what portion of the Gold Bar property that represents?

A. Well, this represents some of the logged-off land. [242]

Q. About how many acres would you say was in-

(Deposition of Carl M. Johanson.)

cluded in that photograph marked No. "1"?

A. Well, of course it is not all logged, you understand.

Q. How much would you say the entire acreage of land is included in that?

A. This here, for instance, is the Fort Blakeley property here and this is Stimson's timber over here. Ours was in here and up in here (showing).

Q. So that that photograph does not entirely represent the property of the Gold Bar Lumber Company? A. Not the green timber.

Q. About how many acres of the Gold Bar Lumber Association is represented there?

A. There is, probably, of the logged-off land which you see here; there is probably twelve hundred acres.

Q. What is the total acreage of Gold Bar?

A. Well, there is about—there was a thousand acres of logged-off land sold last year, including this.

Q. I do not mean the logged-off land. I mean the total acreage. A. That it had in the beginning?

Q. Yes.

A. Of course we have acquired and sold, you know.

Q. I mean in the beginning?

A. Well, in the beginning I should say there was about three thousand acres with the timber and logged-off land; I should judge about that, but then that has been changed,—we kept buying and selling.

Q. And you figure that there is about twelve hundred acres represented there.

A. Of this logged-off—that belongs to Gold Bar—well, there was a thousand of it was sold last year, of

(Deposition of Carl M. Johanson.)

the logged-off lands.

Q. To whom?

A. To Oscar E. Jenson & Company. [243]

Q. For how much? A. A dollar an acre.

Q. Do you know the number of feet of timber that came from there?

A. That would have to be also a guess—I would have to get it from the books.

Q. Can you tell?

A. I can't swear to it accurately.

Q. You could not tell without reference to the books? A. No, sir.

Q. The books will tell it?

A. Why, certainly. My approximation would be, I would say, one hundred million.

Q. You mean entirely?

A. No, I mean that is the stumpage.

Q. I don't want any approximation, I don't want your guess.

A. I could not tell you without the book.

Q. Your approximation about the twelve hundred acres here is a good deal of guesswork.

A. Well, we sold Oscar Jenson one thousand acres of that land that is represented there, and we had about two hundred more logged off, at that time.

Q. I show you identified exhibit No. 2; what does that represent (showing)?

A. Well, this is the logged-off land. I can't exactly locate that—that must be the valley land, by the way it looks.

Mr. RIDER.—I can tell where that picture was

(Deposition of Carl M. Johanson.)

taken if you wish.

Mr. McGINN.—I would rather have the witness testify.

A. Well, what I should say as to this picture—I should say this represented a view of the valley land that we took, but exactly where it is I can't say.

Q. Do you know about how many acres are included in that picture? A. No. [244]

Q. Do you know the number of feet of timber that was cut off of that particular property?

A. I would not know unless I knew the acreage.

Q. That is what you call logged-off land?

A. Yes—in the valley—I should call that valley land.

Q. I show you exhibit No. 3 for identification, and I will ask you what that represents (showing).

A. This represents the logged-off land of the Gold Bar Lumber Company from another viewpoint; only a portion of what was in exhibit No. 1—it is really taken from a different angle.

Q. But it is intended to cover the same ground?

A. Yes.

Q. And what you said about exhibit No. 1 applies to this, so far as this covers what is in there?

A. Yes.

Q. The logged-off land is all included in exhibit No. 1, is it not?

A. Well, as near as you can see it here—that is upland—the valley land is not in it—that shows the upland, what we call the bench land that rises above the level of the valley.

(Deposition of Carl M. Johanson.)

Q. I will ask you to look at exhibit No. 4 and I will ask you to state what that represents (showing).

A. That is taken from the country road just outside of the town—the border line of the town of Gold Bar, and it is an eastern view of the mountains up the Skykomish valley, which is the valley land of the Skykomish—the valley of the Skykomish looking eastward.

Q. Do you now how many acres that represents?

A. This is a view clear up here to Mount Index; that is Mount Index here on the right, right back of that stump or snag, and that is the Three Sisters; back there to these mountains it is probably fifteen miles.

Q. Is that included in Gold Bar?

A. No. [245]

Q. I mean the number of acres of Gold Bar that is included?

A. Very little; this was all disposed of in the early days; Mr. Lewis sold it to settlers, and Gold Bar parted with the title to that before we went in there.

Q. Then this photograph marked No. 4 practically shows nothing of the Gold Bar land in it?

A. That has very little of Gold Bar in it; there was a little over there to the extreme left, but you can't see it.

Q. Then practically everything that throws any light upon the Gold Bar property is contained in Exhibit No. 1.

A. On the logged-off land, yes, only that one picture of the valley.



(Deposition of Carl M. Johanson.)

Q. Were you present when those photographs were taken?     A. I was.

Q. When were they taken?

A. I cannot give you the date; they were taken last fall some time.

Q. About the month of November?

A. October or November; somewhere along there.

Q. Who was present at the time?

A. Myself, Mr. Rider and the photographer.

Q. Did you go over there at the instance of the receiver of the bank?

A. No; I was making trips to Gold Bar regularly for the past year.

Q. You own a one-fifth interest in Gold Bar?

A. Yes, sir.

Q. And naturally you were looking out after your interests more or less in the property?

A. Yes, sir.

Q. And taking trips over there?

A. Yes, while I was engaged.

Q. What would you regard as the present value of Gold Bar?

A. In the neighborhood of \$250,000.

Q. I will ask you to state whether or not you received a telegram from Mr. Jonas in the month of December, 1907, relative to the value of Gold Bar property? [246]     A. I did.

Q. When did you go to Alaska?     A. In 1897.

Q. What part of Alaska?

A. Well, I went to Dawson.

Q. And then from Dawson where did you go?

(Deposition of Carl M. Johanson.)

A. To Eagle City.

Q. How long did you reside in Eagle City?

A. About six years.

Q. When did you first become acquainted with Dan Jonas?

A. I do not remember; probably in 1898 or somewhere along there, or 1899; he came from Dawson down to Eagle.

Q. And you had known him prior to December, 1907, in the neighborhood of ten years.

A. Pretty close to ten years.

Q. I will ask you as to the relationship that existed between you and Mr. Jonas during that time.

A. Why, there was no particular relationship, except rather friendly.

Q. You had confidence in one another?

A. I presume so.

Q. You had confidence in him?      A. Yes.

Q. And you knew he had confidence in you?

A. I presume he did.

Q. And he sent a personal telegram to you in regard to the value of this property?

A. I think he did, yes.

Q. Now, you have stated that you regard the value of the Gold Bar property at that time, that is in March, 1908, as what you paid for it and interest on your purchase price from the time you had purchased it up to March.      A. Yes, sir. [247]

Q. That is what you personally considered the property worth?      A. Yes, sir.

Q. And that is what you would be willing to have

(Deposition of Carl M. Johanson.)

accepted for it?     A. Yes.

Q. The timber is more or less speculative, isn't it?

A. It is speculative in its nature.

Q. And that is your own private opinion in regard to it?     A. Yes.

Q. Is that based upon what they were holding timber elsewhere for in the immediate vicinity?

A. It is a conservative estimate on what timber was held at by others.

Q. And you regard that as a conservative estimate?     A. I do, yes, sir.

Q. You put a plant on there in 1907, didn't you?

A. There was a plant on there.

Q. You increased the plant?

A. The capacity was increased a little.

Q. You say you now regard the property as worth two hundred and fifty thousand dollars.     A. Yes.

Q. There has been considerable timber cut off since that time.     A. Yes.

Q. There is a great difference of opinion amongst men as to the value of timber land, is there not, Mr. Johanson?     A. There is.

Q. More or less of a fluctuating value too, is it not?

A. It follows necessarily with the lumber market—the rise and fall in the lumber market fixes the value of timber considerably.

Q. The market has not been good?

A. It has been very poor since 1907?

Q. It was good in 1907, wasn't it? [248]

A. 1906 and 1907 were the best years they ever had in the lumber business on the Coast.

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United States  
Circuit Court of Appeals

For the Ninth Circuit.

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Transcript of Record.

(IN FOUR VOLUMES.)

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JOHN A. JESSON, E. R. PEOPLES, JAMES W.  
HILL, RAY BRUMBAUGH, R. C. WOOD  
and JOHN L. MCGINN,

Appellants,

vs.

F. G. NOYES, as Receiver of the WASHINGTON-  
ALASKA BANK, a Corporation, Organized  
Under the Laws of the State of Nevada,

Appellee.

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VOLUME II.

(Pages 321 to 640, Inclusive.)

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Upon Appeal from the United States District Court  
for the Territory of Alaska, Fourth Division.

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(Deposition of Carl M. Johanson.)

Q. And from the conditions which existed at that time you could not determine but what they would continue the same way?

A. We could not anticipate that the depression would exist so long as it has.

Q. Did the tariff have anything to do with it?

A. Well, there was no tariff that interfered with the lumber industry up to the present administration.

Q. Was there not an agitation for free timber at that time?

A. Well, there was an agitation, but there was no law, as I remember it, that affected the lumber industry.

Q. Transportation had a lot to do with it?

A. Yes, transportation had something to do with it, but the main thing was the general depression throughout the country in all lines of business.

Q. That was at the time when all the banks of the country went upon the scrip basis?     A. Yes.

Q. Now, you were asked in regard to the market value of the property, as to the value of the stock; as a matter of fact, the stock was never put on the market, was it—it was never offered for sale?

A. Well, stock of that character in an industrial corporation has no market value. When you speak of stock having a market value you mean it is being bought and sold, probably. This has never had that.

Q. You never put any of the stock on the market or anything of the kind?     A. No, sir.

Q. —so that the value could be ascertained.

(Deposition of Carl M. Johanson.)

A. The stock would be worth what the assets of the company represented, less the obligations. [249]

Q. Well, as a matter of fact, it is pretty hard to determine what the value of Gold Bar was in 1907-8?

A. The value of Gold Bar in 1907—we had to look at it from the way the conditions were at that time.

Q. Then it is a hard matter to determine, is it not—that is, you have your opinion about it and another man has his opinion about it.

A. Well, that is true to some extent. Of course we base our conclusions on what the other property of the same kind sells for in arriving at the value.

#### Redirect Examination.

Q. (Mr. RIDER.) Mr. Johanson, were you present when each of those photographs were taken?

A. I was, as I remember; at least they were all taken there.

Q. Do you remember where the photographer was standing when he took the two photographs marked plates 1 and 2, which are Exhibit No. 1?

A. Yes, sir, he was standing on a high stump.

Q. Whereabouts, in reference to the mill property?

A. North of the mill, a little northeast, mostly north.

Q. Do you remember about how far he was from the mill?

A. About three-quarters of a mile, half a mile to three-quarters of a mile.

Q. From the mill? A. From the mill.

(Deposition of Carl M. Johanson.)

Q. Do you remember where he was in reference to the pond; how close he was to the edge of the pond?

A. Well, the pond is right at the mill; it is a little nearer to the pond than the mill, on account of the pond running northeast from the mill.

Q. Do you remember where the railroad runs out along the edge of the pond there?

A. Yes, a logging road.

Q. How close was he to that logging road, if you remember? [250]

A. Well, he was about one-eighth of a mile, I should say, maybe a quarter.

Q. From the road that runs in to the mill?

A. Yes, from the logging road; he may not have been more than one-eighth of a mile—about one-eighth of a mile—it is not a long distance.

Q. Do you remember where he was standing when plate No. 3, which is Exhibit No. 2, was taken?

A. I cannot place this picture, excepting that it is in the valley.

Q. Do you remember where he was standing when plates No. 4 and 5, being Exhibit No. 3, were taken.

A. Well, he was standing about the same locality as where he took this picture No. 3, except that he turned the camera in a different direction. This No. 3 is a little nearer to the hill than this.

Q. Don't you remember that after the first exposures were taken we walked down the railroad and then down the country road to get to the position where No. 3 was taken?

A. Yes. There is part of that in both pictures.



(Deposition of Carl M. Johanson.)

Q. But we were down closer.

A. Yes, we were close up to it. Here is where we were, down around that house.

Q. This bunch of timber which appears in the center of plate No. 2, and back of the house shown in the picture, can you find that timber on plate No. 4?

A. It is out there (showing).

Q. That is the timber on the left of plate No. 4?

A. Yes, sir, right there (showing). This is just a little scrap stuff here, it is not even piling, just small stuff.

Q. On plate No. 6, being Exhibit No. 4, you say that is not part of the Gold Bar property?

A. This was disposed of in the early days—away up yonder is some of the logged-off land. [251]

Q. I refer to the foreground of Exhibit No. 4. Was there any of that that was not part of the Gold Bar property?

A. It was in the early days, but then that was sold. I think most of it was sold by Lewis before we acquired it.

Q. Now, the logged-off land shown in Exhibit No. 2, is that now owned by the Gold Bar Lumber Company?

A. No, that was sold; this valley land, most of it, was sold early.

Q. Before or after you acquired it?

A. Some of it was sold after we acquired it and some of it before; most of it was sold in 1908–9, or somewhere along there.

Q. Now, what proportion of the valley land that

(Deposition of Carl M. Johanson.)

is part of the Gold Bar Lumber Company's property is shown in Exhibit No. 1 (showing) ?

A. There is no valley land shown here; it is all hill land.

Q. Is none of the foreground there valley land?

A. Well, there might be just a little strip—well, it might be up about there (showing). This house seems to be right at the base of where the foothills begin.

Q. Then from the house to the bottom of the picture, that is from a line drawn lengthwise through the house, the lower portion of the picture would represent valley land.

A. Yes. Well, the picture itself shows the demarcation where the hills begin to rise.

Q. Now, you said that a portion of Exhibit No. 1 was not a part of the property of the Gold Bar Lumber Company; what part of it does not belong to the Gold Bar Lumber Company?

A. Well, this covers an area of several square miles.

Q. Is any of the standing timber shown there not belonging to the Gold Bar Lumber Company?

A. Yes, this is all Port Blakeley holdings up here.

Q. The standing timber on plate No. 1?

A. Yes, sir; back of here where you see the logged-off land, back of this standing timber is Gold Bar.

Q. That is back of the mountain, back of the timber? [252]

A. Yes, sir; and the timber running up here is also part of the Gold Bar holdings. This here on the

(Deposition of Carl M. Johanson.)

right of the picture is Stimson's holdings.

Q. On this picture the background extends quite a distance.

A. On this picture you can see probably thirty or forty miles up the mountain.

Q. On Exhibit No. 3 there appears rough ground in the foreground with a little timber on the left of it?     A. Yes.

Q. And the rest of it logged off—is that part of Gold Bar property?

A. That was a part of it until we sold it to Jenson last year.

Q. What portion was sold to Jenson?

A. We sold him a thousand acres.

Q. Of this ridge?     A. Yes, sir.

Q. That logged-off ridge?     A. Yes.

Q. And when was that sold to Jenson?

A. About a year ago.

Q. How much did the company get for it?

A. A dollar an acre. You can see the exposed rocks here.

Q. What, in your opinion, was the value of Gold Bar property in the last of June, say June 30th, 1908?

Mr. McGINN.—I make the same objection to that, that the witness is not shown to be competent to testify.

A. Well, it would be the same basis I valued it at in March, 1908.

Q. (Mr. RIDER.) Do you think it was worth the same price?

(Deposition of Carl M. Johanson.)

A. The original investment, plus interest on the investment at six per cent up to that time?

Q. Up to June 30th?      A. Yes.

Q. What would you say was the value of the Gold Bar Lumber Company property in September, 1909?  
[253]

Mr. McGINN.—To which we object on the ground that it is irrelevant, immaterial, incompetent and calling for the personal opinion of the witness, the witness not shown to be qualified to answer, it not being shown that he is acquainted with the number of feet of lumber upon the property or the value of the lumber per thousand feet, the improvements, etc.

A. Well, on account of the continued poor market in lumber it was not worth as much as it was in 1908, in my judgment.

Q. (Mr. RIDER.) Just give me what you think it was worth.

A. Well, that would be a matter purely of opinion.

Q. I understand that.

A. There was no property of any consequence was changing hands so as to determine the market value of it. From an investment standpoint, in 1908, it was not worth near as much as it was in 1907, and in 1909 in my judgment it was worth less.

Q. Is that as close as you can get to what its market value was in September, 1909?

A. Yes. You must remember that in carrying a proposition of that character, paying taxes, insurance, care of the property and so forth, it runs up to about fifteen thousand dollars a year, and when the

(Deposition of Carl M. Johanson.)

market is such that it don't pay to operate, if you are running behind and can't operate and paying back stumpage on an investment basis you are going back—and this was the case.

Q. You say your mill was not in operation at that time?

A. I could not say whether it was or not. It was run intermittently—it was intermittently—it was started up and closed down from time to time, and that was a bad policy, because every time they started up it cost us ten thousand dollars to get their tools together, and it was very expensive—we lost our organization and it was expensive to get them together again.

Q. What would you say was the market value of the property in May, 1910? [254]

Mr. McGINN.—That is objected to on the ground that the witness is incompetent; he already testified that he cannot testify as to the market value.

A. Well, in 1910 I should say that the value of the property had shrunk a good deal more and it was worth less than it was in 1909.

Q. (Mr. RIDER.) That is as near as you can get to a valuation of it?

A. Oh, yes, due to the continued depressed condition of the lumber business and the cost of carrying it and the cost of overhead charges, such as taxes, insurance, interest, depreciation by reason of being shut down.

Q. Well, you said a while ago, in answer to a question of Mr. McGinn's that you thought its present



(Deposition of Carl M. Johanson.)

valuation was about \$250,000. Now, have those same causes which you referred to as reducing its value down to 1910, been influences which reduced it from 1910 on down to now?

A. That is the principal thing. The condition of the lumber market which has continued up to the present time with the exception of a little flurry last year, has been the cause of the depreciation, and also poor management in closing it, for one thing—opening and closing the mill at various times, which is expensive.

Q. Now, you were for a time in charge of that mill as manager? A. I was, yes, sir.

Q. During what time?

A. I was in charge from May, 1906, or from the first of June when they took possession of it until 1907; in July, I think, 1907.

Q. And then have you been in charge of it since July, 1907?

A. I was in charge of it—I looked after it for about a year.

Q. What year was that?

A. Last year. I was looking after it in an advisory capacity, a directory way, with McKenzie.  
[255]

Q. During the time that you owned an interest in that Gold Bar stock, have you had occasion to go out and examine the property? A. I have.

Q. And you kept yourself informed as to its condition?

A. Yes; especially while I was manager, and espe-

(Deposition of Carl M. Johanson.)

cially since—more particularly since Mr. Armstrong ceased to be manager.

Q. Who is the manager of it at the present time?

A. Mr. McKenzie.

Recross-examination.

Q. (Mr. McGINN.) Mr. Johanson, you were manager of that property from the time that it was purchased by you and the Fairbanks Banking Company up to what time?

A. I think it was July 1st, 1907.

Q. Then Mr. Armstrong was put in as manager?

A. Yes, sir.

Q. I believe you stated that on account of his management of the property you feel that the property depreciated in value.

A. Yes, sir.

Q. Can you say to what extent?

A. No, I could not.

Q. Twenty-five per cent?

A. No, I could not say that—on account of other causes, the principal of which was the depressed lumber market.

Q. But under more favorable management the value of the property would have been a great deal greater, would it not, than you placed on it?

A. If it was conserved more, in my judgment.

Q. Can you estimate what that would be?

A. No, it is impossible.

Q. Now, you say that from 1907 the property has gradually declined in value?

A. Yes, sir. [256]

Q. It declined in 1908, that is, it declined in 1908 from the value it had in 1907, and it declined in 1909

(Deposition of Carl M. Johanson.)

from the value it had in 1908, and it declined in 1910 from the value it had in 1909, and it declined in 1911 from the value it had in 1910, and it declined in 1912 from the value it had in 1911, and it declined in 1913 from the value that it had in 1912.

A. Well, it did not decline during the last year, because the mill, while it operated, did a little better than break even.

Q. Then up to that time you would say that it declined each year?     A. Yes.

Q. Now, you fixed the value upon this property in 1910?

A. Here is the way I based my estimate on it—the timber has been continually reduced, the standing timber, by operation; we have got a big plant up there with a small body of timber, and when that timber is cut out the investment that we carry in plant and machinery, logging railroad and so forth, is largely nill.

Q. And has there been much timber cut since 1910?

A. Yes, sir; there has been quite a lot of timber cut; I could not say just how much—the books will show that.

Q. You would consider the value of the property in 1910 greater than at the present time, would you not?

A. Certainly, there was more timber behind it.

Q. How much greater would you say—can you tell?     A. No, I could not.

Q. You would not estimate that?     A. No.

Q. Do you know that Mr. Noyes, the receiver, of-

(Deposition of Carl M. Johanson.)

ferred to sell the bank's interest in that property for \$225,000?

Mr. RIDER.—I object to that as irrelevant, immaterial and incompetent.

A. I don't know anything about it.

Q. The opinion which you have expressed in regard to the value of this property is from your own point of view? [257]

A. Absolutely.

Q. What you would take for it.

A. Well, with regard to the conditions as they existed in the lumber market?

Q. During the various times? A. Yes, sir.

Q. But it is really what you would take for your investment?

A. Yes, and probably the most I could get.

Q. Well, you put in \$50,000, didn't you?

A. I put in \$60,000.

Q. And that was a considerable portion of the money which you had at that time? A. Yes.

Q. And particularly was the biggest investment which you had? A. Yes.

Q. You were a minority stockholder in the concern? A. Yes.

Q. And you did not have the management of it?

A. No.

Q. And you have felt that it has been mismanaged? A. Absolutely.

Q. And you fixed this price upon what you would have taken to have gotten out? A. Yes.

Q. When you were over there was your expenses allowed by the receiver? A. Over where?

(Deposition of Carl M. Johanson.)

Q. To Gold Bar.

A. I was allowed a salary, yes.

Q. How much were you allowed?

A. I was allowed a hundred and—

Mr. RIDER.—I object to that as irrelevant, immaterial and incompetent.

A. (Continuing.) My salary, probably, averaged one hundred and [258] seventy-five dollars a month.

Q. (Mr. McGINN.) Was that the time you went over there with Mr. Rider?

A. Well, I was in charge then.

Q. How long were you in charge then?

A. Well, I was in charge probably about a year.

Q. And you were allowed one hundred and seventy-five dollars? A. Yes.

Q. Was the mill in operation?

A. —and I want to state while this question is up, that I have spent about two-thirds of my time up there at the mill.

Q. Was Mr. McKenzie there?

A. He was there, yes.

Q. Was the mill in operation?

A. The mill was in operation, yes.

Q. I am speaking of the expenses you incurred during the time that Mr. Rider and you went over there and took these photographs; was that allowed by the receiver also?

A. Why, I had nothing to do with that; that was his business. I don't know anything about that.

Q. Well, who paid your expenses?



(Deposition of Carl M. Johanson.)

A. Well, I paid my own expenses.

Q. Were you reimbursed for it?

A. No; no more than my salary. I didn't consider I went up there on Mr. Rider's business. I was going up on the mill's business and Mr. Rider said he wanted to go up with me and that was all there was about it, and he paid his own expenses, I suppose.

Q. What were your duties as manager?

A. Looking after things, keeping the thing together.

Q. And you maintained an office here in Seattle at the same time?      A. Yes.

Q. What were you doing here? [259]

A. Well I was in the bond business; but I devoted very little time to it—my partner attended to that.

Q. Mr. McKenzie had been over there in charge of the Gold Bar for some considerable time before that, hadn't he?      A. No, Mr. Armstrong was in charge.

Q. You were really manager from the time Armstrong left?

A. That is, Mr. McKenzie has submitted all questions since Mr. Armstrong went, to me. There was no executive officer, according to the by-laws, that could conduct the business—I was the only one. Mr. Barnette took no interest in the business for many years, as you know, perhaps.

Q. You are a partner of Mr. Noyes, the receiver?

A. No.

Q. A stockholder with him in the mill?

A. No, sir.

Q. You were interested with him?

(Deposition of Carl M. Johanson.)

A. I was, in the early days; I have not during—I have no interest with Mr. Noyes during the time that he has acted as receiver.

Q. When did you sell—did you sell out to Mr. Noyes?     A. No, sir.

Q. Who did you sell out to?

Mr. RIDER.—Objected to as irrelevant, immaterial, incompetent, and I move to strike out all this on the same ground.

The WITNESS.—I think this is going into my own personal matters.

Mr. McGINN.—I am going to ask the questions anyway.

Q. In 1905 and 1906, you were engaged in the lumber business in Fairbanks?     A. Yes.

Q. You and Mr. Mills?     A. Yes.

Q. And you were conducting a mill?

A. Yes. [260]

Q. And then you consolidated with Mr. Noyes and with Carroll and his partner?

Mr. RIDER.—I object to this as irrelevant, immaterial and incompetent.

A. Yes, sir.

Q. (Mr. McGINN.) You then became associated in business with Mr. Noyes?

A. I was not associated with him. I was holding stock in the Tanana Mill Company, like Mr. Parker and Mills and Carroll.

Q. You were all interested in this ore concern?

A. Yes.

Q. How long did that continue?

(Deposition of Carl M. Johanson.)

A. I sold out my interest—my stock, about two years ago.

Q. To whom did you sell it?

A. I sold out to Noyes—I did not sell it myself—the money that was received from the stock went to the Scandinavian-American Bank in Tacoma. They practically sold the stock. [261]

State of Washington,  
County of King,—ss.

I, N. W. Bolster, a notary public within and for said State, do hereby certify that on the second day of March, A. D. 1914, before me, as a notary public, the testimony of the foregoing witnesses W. G. Cassells and Carl M. Johanson was taken pursuant to the notice and stipulation hereto attached; the said witnesses before testifying were by me first duly sworn to testify the truth, the whole truth and nothing but the truth; that I took such depositions accurately in shorthand and thereafter transcribed the same, and that the foregoing is a full, true and correct transcript of said shorthand notes; and I further certify that during the taking of the deposition of W. G. Cassells two documents used in connection with the examination of said witness were by me marked for identification of exhibits "1" and "2," and returned to counsel for defendant; that during the examination of the witness Carl M. Johanson certain photographs identified by and used in the examination of said witness were by me marked as exhibits "1," "2," "3" and "4" to the deposition of Carl M. Johanson

(Testimony of Sidney Stewart.)

and the same are returned herewith as part of said deposition.

IN WITNESS WHEREOF I have hereunto set my hand and affixed my notarial seal this 3d day of March, A. D. 1914.

[Seal]

N. W. BOLSTER,

Notary Public in and for the State of Wahington,  
Residing at Seattle.

Notary's fees paid by plaintiff, \$36.75.

N. W. BOLSTER,

Notary.

[Endorsed]: Filed in the District Court, Territory of Alaska, 4th Div. Apr. 22, 1914. Angus McBride, Clerk. By P. R. Wagner, Deputy. [262]

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**[Testimony of Sidney Stewart, for Plaintiff  
(Resumed).]**

Q. Mr. Stewart, on yesterday you produced some notes executed by Mr. Barrett, and they have been referred to—or, at least one of them—as being secured by some insurance. Will you produce the note that has been referred to as secured by insurance?

Mr. RIDER.—In view of the fact that this note is not paid, I ask permission to supply a copy of it as an exhibit, so that the original may be retained by the receiver, together with the indorsements. (Reads exhibit “O.”)

**[Plaintiff's Exhibit “O”—Note from Wm. Barrett.]**

“\$16,950.63. Fairbanks, Alaska, June 16, 1906.

On demand, after date, for value received I

(Testimony of Sidney Stewart.)

promise to pay to the order of Fairbanks Banking Company at the office of Fairbanks Banking Company, Fairbanks, Alaska, the sum of Sixteen thousand nine hundred fifty 68/100 dollars, with interest thereon at the rate of twelve per cent per annum, both principal and interest payable in lawful money of the United States of America. Secured by fire ins., loss. Due; Demand.

WILLIAM BARRETT."

Q. Mr. Stewart, will you turn to the books showing the entry of this note on the books of the bank? (Witness turns to book.)

Mr. MCGINN.—Q. What book is that, Mr. Stewart?

A. This is the register of loans and discounts of the [263] Fairbanks Banking Company, partnership.

Mr. RIDER.—Q. What date does it appear to have been entered?

A. Under date of June 23, 1906.

Q. What payments, if any, are shown on that book upon this note, and the date of them, and what disposition is made of the note, according to the record?

Mr. CLARK.—What page are you reading from?

A. Page 40. Payments: 9/15 \$474.45; 4/1 \$2800.-00; 4.16 \$3581.15.

Mr. RIDER.—What year?

A. The year is not marked on that. 3/24/09 \$1687.45; 12/31/09 \$8407.58.

Q. Look at the books showing that entry of December 31, 1909, and show how that entry was put



(Testimony of Sidney Stewart.)

through the books, what the debits and credits are.

A. I haven't the general tickets for that.

Q. Can you find the accounts that that entry went into?

Mr. McGINN.—Your purpose is to show that that was charged off as a bad debt?

Mr. RIDER.—Will you admit that that was done on December 31, 1909?

WITNESS.—\$8,407.58 was credited to their loans and charged to a bad debt account, included in a total sum of some \$23,000 with some other items. That all was charged to the profit and loss account.

Mr. RIDER.—I want to offer in evidence the indorsements which, without reading them, are identical with the entries read from the book, excepting they do not show the December 31st credit of \$8,000.

Mr. McGOWAN.—Those payments are all made on the principal.

Mr. RIDER.—I will read them: September 15, 1906. Paid on account \$474.45. April 1, 1908, ditto \$2,800. April 16, 1908, paid [264] on principal \$3,581.15. March 24th, ditto, \$1,687.45.

Q. Now Mr. Stewart, this note says it is secured by fire insurance loss. Has the receiver in his possession the security referred to in the note?

A. No sir.

Q. Has it ever been in the possession of Mr. Noyes, as receiver? A. No, sir.

Q. Another note was referred to in the testimony of Mr. Cassels, being a Casey note of \$40. Do you remember that note? A. Yes, sir.

(Testimony of Sidney Stewart.)

Q. Have you that note?

A. Yes, sir. (Produces same.)

Q. For the purpose of identifying the note in the contract with this Casey note, signed by William Casey, I produce the note. I don't care to read it in evidence, unless you dispute that this is the note 280 referred to in the contract.

Mr. McGINN.—No, we don't dispute that.

Mr. RIDER.—Signed by William Casey and A. H. Saylor. The original note was \$45. There is a label posted on it that says \$45. Now, Mr. Stewart, do you know of demand having been made on William Casey for payment of this note? A. Yes, sir.

Q. When, as near as you can recollect?

A. I believe in 1911, in the summer of 1911 Casey was outside. I believe it was that fall of 1911 that he came in from the outside.

Q. Was the note paid? A. No, sir.

Q. What did Mr. Casey do?

A. He refused to pay the note.

Q. Why?

A. I believe he said that Barnette should have paid the note. [265]

Mr. RIDER.—With the right to supply a copy of this note, I offer it in evidence (Reads same):

“\$45.00. Fairbanks, Alaska, March 31, 1905.

For value received, 60 days after date, we promise to pay to the order of Fairbank Banking Company at their bank office in Fairbanks, Alaska, forty-five dollars in gold coin of the United States of America of the present standard value, with interest thereon

(Testimony of Sidney Stewart.)

at the rate of twelve per cent per annum from maturity until paid. If not paid when due, the interest to be added to and become a part of the principal, and the whole sum of both principal and interest to bear interest thereafter at 12 per cent per annum, interest to be paid———, and if not so paid, the whole sum of both principal and interest to become immediately due and collectible at the option of the holder of this note. In case suit or action is brought to collect this note or any portion thereof, we promise to pay, in addition to the costs and disbursements provided by statute, a reasonable amount of attorney fees in said suit. All indorsers, sureties, guarantors and assignors severally waive presentment for payment, protest, and notice of protest for non-payment of this note, and all defenses on the ground of any extension of time of its payment that may be given by the holder or holders of them or either of them or the maker or makers thereof.”

(Signed)

WILLIAM CASEY

A. C. SAYLOR.”

No. 280. [266]

Mr. RIDER.—Q. On yesterday afternoon you were examined respecting certain items which had been charged to bad debt accounts of the partnership, and also in reference to charges to profit and loss by the corporation, of those items. Now, I wish you would again refer to that profit and loss account of December 31, 1909 and tell the Court, in addition to the notes that were included in the bad account of the partnership, what other notes were transferred by

(Testimony of Sidney Stewart.)

the partnership to the corporation and subsequently charged off on December 31, 1909 by the corporation.

Mr. CLARK.—We object to the form of the question, because there is no such account as “bad debt account.” The account he refers to is “doubtful account.”

Mr. RIDER.—Let Mr. Stewart state whether that is correct or not.

A. The Fairbanks Banking Company, a partnership, carried an account they called a “doubtful account”; the Fairbanks Banking Company, a corporation, charged certain loans to a bad debt account, and then the bad debt account was charged to profit and loss. The corporation carried no doubtful [267] account.

Mr. RIDER.—Q. Having those three accounts in mind; the doubtful account of the partnership, and bad debt account of the corporation, and the profit and loss account of the corporation, tell the court what notes went into those accounts which were included in the notes sold by the partnership to the corporation, and the dates when they went in there.

A. Of the notes taken by the Fairbanks Banking Company from the partnership, on March 16, 1908, there was later charged to profit and loss an amount of \$22,654.08.

Q. The date of that?

A. Well, there are several different dates. The first—(Int.)

Q. You can show in your own way, then.

A. The bulk of those items were charged on

(Testimony of Sidney Stewart.)

December 31, 1909. On January 6, 1909, there were part of them charged—There was one item I recollect now.

Q. Was the first of them charged off on December 31, 1909?

A. The bulk of them were charged off on December 31, 1909, but there were others on other dates.

Q. Specify the notes you refer to, and the dates they were charged off, having in mind the notes transferred to the corporation by the partnership.

A. There is quite a long list to read, and there is only one other date outside of that.

Q. Give us the note.

A. That is on September 6, 1910.

Q. Commence at the beginning. The first notes that were charged off that are included in this contract. A. Number 1054, J. Worgan.

Mr. RIDER.—In the petition in paragraph 9 it is correctly stated as J. Worgan, but in the list it is listed as J. Morgan. [268] A. That is for \$200.

Q. The next note is number 1225. That is the Barrette note.

A. The amount that was charged to profit and loss was \$8,407.58. That was held at that time at \$16,476.18.

Mr. McGinn—Q. What date was that charged off?

A. That was December 31, 1909.

Note number 1376, Fred Schaupp. That was held at that time at \$4,420. There was \$3,785.22 charged to profit and loss December 31, 1909.

Number 1435. Brazeau. Held at that time at



(Testimony of Sidney Stewart.)

\$400. That was held at \$400, and \$102 was charged to profit and loss September 6, 1910.

The next note is number 1530. This is the Fairbanks Commission House, Fenwick & Eachen.

Q. What is the date of that?

A. This is for \$2,000.

Q. Have you the Fenwick note there?

A. This is for \$2,000. This is the note signed by George Fenwick.

Mr. McGINN.—Does your question go to the notes that were charged off by the partnership in 1907?

Mr. RIDER.—No. I am asking about the notes that were charged off [269] by the corporation, which were sold by the partnership to the corporation.

A. This was carried at \$2,000, and charged to profit and loss as \$2,000 on December 31, 1909.

Number 1891, Fairbanks Commission \$33.95. This was carried at that time as \$33.95, and charged off \$33.95 to profit and loss on December 31, 1909. This is a memorandum charge, not signed by anybody, but in the name of Fairbanks Commission; written on the note: Number 1544, James Frost, carried at that time at \$750 and \$750 was charged to profit and loss December 31, 1909.

Also number 1733, James Frost, carried at \$100, charged to profit and loss on December 31, 1909, \$100.

Number 1721, W. F. Green. It was carried at \$1,332.74, and the same amount charged to profit and loss December 31, 1909.

Number 1854, James Gallagher. It was carried at

(Testimony of Sidney Stewart.)

that time as \$154 and charged to profit and loss \$133 on December 31, 1909.

Number 2007, Tharp, Rusk & Smith at \$2500, and the same amount charged to profit and loss on December 31, 1909.

Number 2099, memorandum note, News Publishing Company. Carried at that time at \$262.50. There was \$162.50 of principal and interest of \$53.80 both amounts charged to profit and loss. I mean the total *it* \$216.30 instead of \$262.30.

Mr. McGINN.—What is the date of the note?

[270]

A. December 7, 1907.

Q. When was it due?

A. There is no due date on it; simply a memorandum note; just a memorandum, signed by nobody.

Number 1163, Cathcart. Carried at that time—  
(Interrupted.)

Mr. McGINN.—We object as that is not included in the list.

The COURT.—Overruled.

A. —at \$410. There was \$227 charged to profit and loss on December 31, 1909.

Number 1304 and number 505 and number 2115 were the Sorenson notes, Royal Hotel. Carried at that time, those three items, at \$4,220.79. And the same amount charged to profit and loss, and there was a credit to profit and loss of \$2133.10, which would be \$1889.69, loss.

Mr. CLARK.—Q. When was it charged off?

(Testimony of Sidney Stewart.)

A. That was January 6, 1909. That completes the list.

(Here the Court takes a recess until 1:30 P. M. today.) [271]

Mr. RIDER.—Now, I desire to read, and offer in evidence, a part of minutes of the special meeting of the board of directors of the Fairbanks Banking Company held on the 16th of March, 1908. I will offer and read as marked on the first page.

Mr. McGINN.—No objection.

(Marked Plaintiff's Exhibit "T.")

Mr. RIDER.—The portion I desire to read is as follows. (Reads):

**[Plaintiff's Exhibit "T"—Part of Minutes of Special Meeting of Board of Directors of Fairbanks Banking Co., March 16, 1908.]**

"Minutes of special meeting of board of directors, Fairbanks Banking Company. A special meeting of the board of directors of the Fairbanks Banking Company was held at the office of McGinn & Sullivan upon the 16th day of March, 1908, at the hour of ten o'clock A. M. pursuant to a notice personally served upon the directors as is provided in Sec. 7 of Article II of the By-Laws.

Present: E. T. Barnette, president. B. R. Dusenbury, Secretary. C. E. Claypool, D. H. Jonas, John Jesson, Dan Ryan, M. H. McMullen, Hans Stark.

The secretary informed the meeting that he had personally served notice upon each of the members of the board of directors, which said notice specified the time and place of holding said meeting, and that

(Testimony of Sidney Stewart.)

the object thereof was to confer upon Mr. R. C. Wood, Cashier of Fairbanks Banking Company, authority to execute notes for said Fairbanks Banking Company, in favor of Dexter-Horton Company of Seattle, to the amount of two hundred thousand dollars, and to do such other acts and things as are necessary to complete arrangements for an overdraft and credit with said Dexter-Horton Company.

The secretary then read a telegram from R. C. Wood which was as follows:—

“Telegraph Dexter-Horton Company my authority to [272] sign notes to the extent of two hundred thousand dollars.”

Upon motion of D. H. Jonas, seconded by John Jesson it was RESOLVED, that the said R. C. Wood be and he hereby is authorized for and on behalf of the Fairbanks Banking Company to execute notes for the Fairbanks Banking Company in favor of Dexter-Horton Company to the amount of Two Hundred Thousand Dollars, and to do such other acts and things as are necessary to complete arrangements for a credit or overdraft with said Dexter-Horton Company, as he the said R. C. Wood shall see fit.

All the directors present voting in favor of said resolution the same was declared unanimously carried.”

Q. Have you with you, Mr. Stewart, the letter from R. C. Wood to the Dexter-Horton Company and the notes executed by him in pursuance to this resolution?

(Testimony of Sidney Stewart.)

A. Yes. (Hands same to Mr. Rider.)

Mr. RIDER.—For the purpose of showing that R. C. Wood entered upon his duties as cashier as early as March 16, 1908, we offer in evidence these four notes.

Mr. McGINN.—We contend that the performance of a single act of this kind, would not be entering upon the discharge of his duties as cashier. The cashier is the managing agent of the bank, and he is not here.

But we will admit that there are four notes, aggregating in all \$200,000; one executed March 16, 1908, for \$75,000, one March 17, 1908, for \$25,000, one April 21, 1908, for \$50,000 and one May 13, 1908, for \$50,000, and all marked “paid.” All of them signed: “Fairbanks Banking Company, R. C. Wood, Cashier.”

Mr. RIDER.—That is sufficient, then, and we will withdraw the offer of the notes as exhibits. [273]

Mr. RIDER.—I now offer for the purposes of the record, a letter—

Mr. McGINN.—One moment. In order that there may be a clear understanding of the matter, one of those notes purports to have been signed on the 13th of May. Mr. Wood at that time was here. The dates were left in blank, as Mr. Wood informs me, and subsequently filled in.

Mr. RIDER.—They were signed upon the 16th of March?

Mr. R. C. WOOD.—I don't remember if it was the 16th, but around there somewhere.



(Testimony of Sidney Stewart.)

Mr. RIDER.—And all left with the Dexter-Horton Company?

Mr. WOOD.—Yes, about that date.

Mr. RIDER.—I now offer in evidence a letter signed by R. C. Wood, addressed to the Dexter-Horton Company, dated Seattle, Washington, March 20, 1908, signed “ R. C. Wood, Cashier.”

The COURT.—It may be received, if there is no objection.

(Marked Plaintiff's Exhibit “U.”)

Mr. RIDER.—(Reads exhibit “U”):

**[Plaintiff's Exhibit “U”—Letter from R. C. Wood to Dexter-Horton & Co.]**

“Seattle, Washington, March 20, 1908.

Dexter-Horton & Co., City.

Gentlemen: This will be your authority to honor any drafts that may be presented to you for payment, issued by the Fairbanks Banking Company, Fairbanks, Alaska, and drawn on either the Scandinavian-American Bank or the Seattle Washington Bank. The amount of outstanding drafts drawn on either of the above banks do not aggregate over \$2500.00. Charging same to our account.

Yours very truly,

R. C. WOOD,

Cashier.”

I next offer in evidence a telegram sent by the Fairbanks Banking Company to R. C. Wood, dated January 7, 1908.

Mr. McGINN.—No objection. (Marked Plaintiff's Exhibit "V.") [274]

Mr. RIDER.—(Reads exhibit "V"):

**[Plaintiff's Exhibit "V"—Telegram from Fairbanks Banking Co., to R. C. Wood.]**

"Fairbanks, Alaska, January 7, 1908.

R. C. Wood. Care Kerr & McCord, Mutual Life Building, Seattle, Wash.

Refer to our telegram 27th Bank is being organized as outlined will be incorporated laws Nevada capital stock \$300,000 Will not be paid fully until July 1st New bank will take assets old concern paying us approximately \$288,000 Barnette will leave \$200,000 on deposit for a year without interest We will agree to take 88,000 in stock old bank will retain doubtful resources approximately 60,000 which are not included by committee in amount of assets turned over also accrued interest on all loans to Feb. 15th when new bank will take over business will have difficulty selling stock.

Signed: Fairbanks Banking Co."

I offer in evidence a telegram from the Fairbanks Banking Company to R. C. Wood, dated December 27, 1909, and then I offer in evidence a telegram from R. C. Wood to the Fairbanks Banking Company dated apparently January 6, 1908.

Mr. McGINN.—We make the general objection that they are irrelevant and immaterial, private communications between Mr. Wood and the Fairbanks Banking Company and Mr. Hill, and not binding upon the defendants.

The COURT.—They may be admitted, subject to the objection.

(Marked Plaintiff's Exhibits "W" and "X" respectively.)

Mr. RIDER.—(Reading Plaintiff's Exhibit "W"):

**[Plaintiff's Exhibit "W"—Telegram from Fairbanks Banking Co. to R. C. Wood.]**

"Fairbanks, Alaska, December 27, 1907.

R. C. Wood, Care Scan American Bank, Seattle, Wash. Refer to your telegram 22nd. It is reported mine operators here will organize bank. Everything is favorable for such venture To head this off have every reason to believe can reorganize our bank. Selling stock to operators and [275] local merchants new bank to take over assets at an arbitrated valuation. What is your idea concerning foregoing? Have received a letter from First National Bank, San Francisco, California, very friendly before the return of you do you think well of going San Francisco Try to arrange for overdrafts. McGinn suggests Metson would help you Northern Commercial Company, San Francisco might also assist. Certificate plan is working well. Lack of exchange only inconvenience What prospects is there of Scandanavian American Bank Seattle making transfer Tanana Electric in the near future or shall we require sue?

Fairbanks Banking Company."

(Reads translation Plaintiff's Exhibit "X"):

**[Plaintiff's Exhibit "X"—Telegram from R. C. Wood to Fairbanks Banking Co.]**

"Seattle, Jan. 6. Fairbanks Banking Company,  
Fairbanks, Alaska.

In reply to your telegram of 27th. If you can organize can we obtain an interest in? Will leave the matter entirely in your hands. This is signed  
R. C. WOOD."

Mr. McGinn, will you admit that Mr. Wood was here in Fairbanks on the 14th of April? If not, we will have to introduce some records, showing that he was here April 14, 1908.

Mr. McGINN.—We will admit that he was here on that date.

Mr. RIDER.—Now, I wish to read from Plaintiff's Exhibit "F-16," which has been introduced in evidence, being a letter addressed to R. C. Wood and signed "Jim" as follows Reads):

"Fairbanks, Alaska, January 8, 1908.

R. C. Wood Esq, c/c Kerr & McCord, Mutual Life Building, Seattle, Wash.

Dear Dick:

The new concern will take over the business on the basis of the statement prepared by the committee [276] of investigation as to the financial condition when the bank closed its doors on December 12th. They are agreeable that we shall have, that is, Captain, yourself, and myself, approximately \$88,000 worth of stock out of the \$300,000 which would be the total subscription and Captain has agreed to leave the \$200,000 on deposit with the new bank for

(Testimony of Sidney Stewart.)

one year. One of the main reasons for this is so that the new concern will be protected should Causten get judgment and that judgment might affect the value of the Gold Bar stock presently in the hands of the Scandinavian-American Bank. \* \* \*

Since we started to work on this scheme of reorganization several parties, among them Mr. Hammel of Ester Creek, have endeavored to have the stockholders of the First National Bank take stock in our new bank and gradually wind up the business of the First National Bank which we understand is not in particularly good shape. We made them a proposition like this: that we would take less stock in the new concern, say \$50,000, instead of \$88,000, and sell the stockholders of the First National Bank an equal amount, leaving \$200,000 to be subscribed by the operators and merchants or increase the capital stock to \$350,000, taking \$75,000 and the stockholders of the First National Bank taking a like amount." \* \* \*

As I said before our main trouble will be to distribute the stock fairly as the handful of men at the meeting the other evening subscribed their names for nearly \$200,000 worth of stock including, of course, \$88,000 for Captain, you and me. We, of course, had them subscribe on the understanding that should the stock [277] be oversubscribed we may have to ask them to reduce their subscriptions."

Q. Now, Mr. Stewart, will you turn to the books of the bank showing their capital stock account, that



(Testimony of Sidney Stewart.)

is the Fairbanks Banking Company on March 16, 1908?     A. Yes, sir.

Q. What does it show on that date?

A. Under date of March 14, 1908, balance credit \$300,000.

Q. Mr. Stewart, when capital stock of the corporation is sold, how is it entered in the capital stock account, as a credit or as a debit?

A. There was no entry made in capital stock account.

Q. How did they keep it?

A. They continually carried their capital stock at \$300,000. They had another account of treasury stock, in which said entries were made.

Q. Then turn to the treasury stock account. Now, what is the first entry you find there?

A. March 14, 1908, balance \$97,800.

Q. Now, when stock is sold which was sold by the corporation, how did they enter it upon their books, as a charge or as a credit?

A. It would be credited to treasury stock.

Q. And when stock was brought back by, or surrendered to the corporation, how would they enter it?     A. It would be charged to treasury stock.

Mr. RIDER.—I believe for convenience at this time I will introduce in evidence the debit and credit entries of the treasury stock account. I will say to counsel and to the Court that if it will convenience you any we will make a typewritten copy of this.

Mr. McGINN.—We will object that they are not binding on these who were not directors at the time

(Testimony of Sidney Stewart.)  
of the surrenders. [278]

Mr. RIDER.—Q. I would like to have read to the stenographer the debit and credit charges in the treasury stock account as they appear.

A. Debits:	June	30, 1908	\$13,000.
	July	15,	100.
	July	20,	6,800.
	July	23,	500.
	July	29,	1,000.
	August	5,	2,000.
	August	6,	500.
	August	8,	1,000.
	August	14,	1,000.
	August	18,	1,500.
	October	23,	200.
	November	19,	11,000.
	November	25,	1,000.
	January	12, 1909,	200.
	February	9,	200.
	February	19,	500.
	June	10,	1,000.
	September	21,	1,000.
	October	28,	1,500.
	November	10,	500.
	November	23,	500.
	January	18, 1910	500.

On the credit side:

	March	16, 1908	\$ 3,800.
	March	17,	1,000.
	March	18,	100.
	March	20,	200.

(Testimony of Sidney Stewart.)

March	23,	7,000.
May	8,	100.
June	10,	200.
May	14, 1910	1,000.

Q. Have you read the debit of October 25, 1910?

A. No. That is not in this book. On that date they were carrying their general accounts in the general statement book of the Washington-Alaska Bank, formerly *Washington-Alaska Bank of Washington*.

Q. The last item was January 18, 1910, and any item since that date would be on the other set of books? A. On the other set of books.

Q. You didn't bring them up this afternoon?

A. No.

Mr. RIDER.—We will ask the right to show that other item later on.

Q. Now, the first deposit that you read, of June 30, 1908, \$13,000. [279] Can you tell from the books and records that you have there what that debit arose out of? A. Yes, sir.

Q. From what do you read?

A. There is a debit entry—(Interrupted.)

Q. What is the paper; from a debit slip?

A. A general debit slip in the *filed*. (Attorneys for defendants examine said slip.)

Mr. McGINN.—We desire at this time to interpose an objection to all of this testimony pertaining to the purchase of this stock by the corporation, for the reason that it is not shown that the stockholders of said corporation, or the corporation itself ever ob-

(Testimony of Sidney Stewart.)

jected to the same *of* the same in any way, and that no objection was ever made to the sale until the institution of this action; that it is apparent from the proceedings that have taken place in this case that the objections that are being urged against the purchase of this stock by the receiver are for the creditors of the Washington-Alaska Bank of Nevada, and, as to this item of November 3, 1908 (means June 30, 1908, probably) amounting to \$13,000, the then directors could not be held responsible to the creditors of the Washington-Alaska Bank some two or three years afterwards. It is not shown that there were any existing creditors at this time, and it is only the existing creditors at that time that can complain against the action of the board of directors. I desire the objection to run through each separate item.

The COURT.—The objection will be overruled at present. The same point is involved in the other matter that has been submitted to the Court, at least, it is involved in that.

Mr. CLARK.—That objection goes to all of the defendants represented here. [280]

The COURT. — Yes. (Defendants except.)  
(Marked Plaintiff's Identification 4.)

Mr. RIDER.—Q. Now, Mr. Stewart, use the debit slip which you referred to, and which has been marked for identification as Plaintiff's Identification Number 4, and tell me what that debit of \$13,000 on June 30, 1908, to treasury stock, is?

A. It is a debit to treasury stock, R. C. Wood stock

(Testimony of Sidney Stewart.)

\$13,000. Initialed "D."

Q. Is there any corresponding credit for that debit?     A. Yes, sir.

Q. What is the credit?

A. A certificate of deposit was issued for that amount. In the certificate of deposit register, under date of June 30, 1908, a certificate of deposit was issued, numbered 577, R. C. Wood, \$13,000.

Mr. McGINN.—We admit that.

Mr. RIDER.—Do you admit that you got that \$13,000?

Mr. McGINN.—Yes, sir.

Mr. RIDER.—You admit that the certificate of deposit was issued on June 30, 1908, and that it was subsequently cashed?

Mr. McGINN.—And that it was paid that day?

WITNESS.—It was not paid on June 30th.

Mr. RIDER.—Q. What date does it show that it was paid?

A. On July 20th that certificate was cancelled, and a new certificate for \$10,000 numbered 581 was issued, and \$3,000 was placed to Mr. Wood's credit under date of July 20, 1908. No, the new certificate was issued on July 20, and was presented on August 3d and placed to his credit.

Mr. RIDER.—The admission will go to the effect that Mr. Wood subsequently cashed this \$13,000 certificate of deposit, and got the money on it?

Mr. McGINN.—Oh, yes. [281]

Mr. RIDER.—Q. Now, Mr. Stewart, on June 30, 1908, in what amount were the total assets of the



(Testimony of Sidney Stewart.)

Fairbanks Banking Company as shown by their books?   A. A total of \$1,251,924.96.

Q. What were their total liabilities on that date, including capital stock?   A. \$1,290,843.43.

Q. On that day, how much capital stock was outstanding?   A. \$201,600.

Q. Have you got a computation, based upon the records of the bank, of the amount of past due paper held by the bank on June 30, 1908, and which is now in the hands of the receiver and unpaid?

A. Yes, sir.

Q. What was that amount?

Mr. McGINN.—We object to that as immaterial whether it was past due or not.

(Objection overruled. Defendants except.)

A. The total amount is \$75,699.61.

Mr. RIDER.—That is the amount which is now in his hands that was past due on that date.

Mr. McGINN.—Will you furnish us a list of that?

Mr. RIDER.—I think Mr. Stewart can furnish you a list when you come to cross-examine him, if you want it.

Mr. McGINN.—I think we ought to be apprised of these things. We want to know what he bases this on.

The COURT.—He says he has examined the books and that is what they show, and it is competent testimony. Of course, you have a right to cross-examine him on it.

Mr. RIDER.—Q. As shown by the books of the

(Testimony of Sidney Stewart.)

company on that date, [282] June 30, 1908, among their resources did they have any item of stocks?

A. Yes, sir.

Q. What was that item? A. \$341,949.

Q. Do you know what stocks that was?

A. Gold Bar Lumber Company.

Mr. RIDER.—I wish to read in evidence from the minutes of the meeting of the board of directors of the Fairbanks Banking Company held on July 13, 1908, those portions which I will submit to counsel and mark. (Refers to Plaintiff's Exhibit "Y.") (Reads):

"Minutes of the meeting of the board of directors of the Fairbanks Banking Company. Fairbanks, Alaska, July 13, 1908. The regular monthly meeting of the board of directors of the Fairbanks Banking Company was held at the office of the corporation at Fairbanks, Alaska, at 8 o'clock P. M. E. T. Barnette, President, presiding. B. R. Dusenbury, Secretary, present. Members present: Robinson, Jesson, Flygar, Jonas, Ryan, Barnette, Anderson. James W. Hill, Vice-president, was also present.

Report of officers. The presiding submitted a written report in detail showing the condition of the affairs of the bank on July 11, 1908. The report was examined in detail, and, on motion, duly made and seconded, it was ordered filed."

Q. What is the next item of charge. I will go on with the stock surrender (This to the Court.).

The COURT.—Very well.

Mr. RIDER.—Q. The next item of charge to the

(Testimony of Sidney Stewart.)

treasury stock account? [283] A. July 15th.

Q. In what amount? A. \$100.

Q. Will you examine the records and tell me what that relates to?

(Discussion as to whether the answers deny the various stock surrenders.)

Q. What is that item of \$100.00 charged to treasury stock on July 15, 1908, to which you have referred?

A. That is charged to treasury stock; P. B. Walsh, \$100, on a regular debit ticket initialed "D."

Mr. McGINN.—We now object, and move that this be stricken out, because it is not shown that the directors had any knowledge of it at all.

The COURT.—Motion denied. If the evidence is not sufficient to bring it home to the board of directors, they would not be liable, but I think it might be properly considered on the whole case.

Mr. RIDER.—Q. What is the next charge after July 15th? A. Under date of July 20th, \$6,800.

Q. What makes up that item?

A. The charge to treasury stock: Thomas \$1,000, McBride \$2,000, Letnis \$2,000, Larson \$1,000, Johnson \$200, Tobin \$200, Cribb \$500, Wing \$200, Nordale \$500, Barrett \$1,000. Total \$6,800. On regular charge ticket initialed "D."

Q. Mr. Stewart, what was the total amount of the assets of the Fairbanks Banking Company as shown by their books on July 20, 1908, the date when that large charge that you have read was made to treasury stock? A. The total assets was \$1,208,796.60.

Q. What was the total liabilities?

(Testimony of Sidney Stewart.)

A. The total liability was \$1,229,489.68 [284]

Q. Have you made a computation for the purpose of determining the amount, if any, of past due paper which the Fairbanks Banking Company held as an asset on July 20, 1908, and which is now in the hands of the receiver, unpaid? A. Yes, sir.

Q. What is the total amount of that?

A. The total past due July 20th, and unpaid, is \$95,162.36.

Q. On July 20, 1908, did the Fairbanks Banking Company, as an asset carry any item of stocks?

A. Yes, sir.

Q. What was that item? A. \$341,949.

Q. What was that stock?

A. Gold Bar Lumber Company.

Q. Now, you may take your next item of charge?

A. July 23d, \$500.

Q. What does that charge arise from?

A. E A. Suter returned, \$500. Regular charge ticket, initialed "D."

Q. What is your next item? A. July 29th.

Q. What is the amount? A. \$1,000.

Q. What makes up that item?

A. Debit to treasury stock, Samuel R. Weiss, 10 shares refunded. \$1,000, initialed "D."

Q. What were the total assets of the Fairbanks Banking Company on July 29, 1908?

A. \$1,251,753.08.

Q. What was their total liability?

A. \$1,267,411.60. [285]

Q. How much capital stock did they have outstand-

(Testimony of Sidney Stewart.)

ing on that date?     A. \$193,200.

Q. I didn't ask you the amount they had outstanding on July 20th in capital stock.     A. \$194,700.

Mr. HEILIG.—Q. On July 29, 1908, how much?

A. \$193,200.

Mr. RIDER.—Q. On July 29, 1908, what amount, if any, of past due paper was carried as an asset by the Fairbanks Banking Company, which is now in the hands of the receiver, unpaid?

A. That will require some figuring on my part.

(Consultation between Mr. Rider and witness.)

Mr. RIDER.—I will withdraw the question for the present.

Q. Have you made a computation showing the total amount of past due paper held by the Fairbanks Banking Company on July 29, 1908, and which was never paid?     A. Yes, sir.

Q. What is that amount?     A. \$94,162.36.

Q. What is your next item of charge to treasury stock?     A. On August 5, 1908.

Q. What is that charge?     A. \$2,000.

Q. What does that consist of?

A. Debit treasury stock No. 11, Osmond Olsen, through J. A. Jesson, 20 shares, \$2,000. Initialed "D."

Q. What was the total amount of the assets of the Fairbanks Banking Company as shown by their books on August 5, 1908?     A. \$1,226,674.20.

Q. What were their total liabilities on that date?  
[286]     A. \$1,248,192.51.

Q. What was their outstanding capital stock on



(Testimony of Sidney Stewart.)

that date?      A. \$191,200.

Q. What amount, if any, of past due paper was in the hands of the Fairbanks Banking Company as an asset on August 5, 1908, and which was never paid?

A. \$94,312.36.

Q. Among the assets of the Fairbanks Banking Company on August 5, 1908, is an item of stocks \$341,949. What is that?

A. Gold Bar Lumber Company.

Mr. RIDER.—In order not to repeat that, will you concede that that runs through as the item of stock from this on to the time the bank's first receivers were appointed?

Mr. McGINN.—Yes.

Mr. RIDER.—And that may be treated as I have treated it here by the questions, as to each of the statements;—that item of stock of \$341,949 relates to Gold Bar?

Mr. McGINN.—Yes.

Mr. CLARK.—Yes, reserving our objection to its materiality.

Mr. RIDER.—Oh, certainly.

Q. The next item of charge now, Mr. Stewart?

A. August 6th, debit treasury stock, number 24, A. J. Williams, cancelled and returned to treasury 5 shares, \$500, initialed "D."

Q. And the next?      A. August 8th, \$1,000.

Q. What is that?

A. Debit treasury stock, R. R. Myers, refund 10 shares, \$1,000. Initialed "J."

Q. Your next?      A. August 12th, \$500. [287]

(Testimony of Sidney Stewart.)

Q. What is that made up of?

A. Debit treasury stock, Dave Courtemanche, refund \$500. Initialed "J."

Q. When you say, initial so-and-so, you are speaking of the initial that is on the debit slip?

A. The initial on the debit ticket, yes.

Q. Your next charge? A. August 14, \$1,000.

Q. What is that?

A. Debit treasury stock refund, Keyes \$1,000. Initialed "D."

Q. Now, on August 14, 1908, what were the total assets of the Fairbanks Banking Company as shown by their books? A. \$1,292,225.19.

Q. And their total liabilities? A. \$1,311,292.63.

Q. How much capital stock was outstanding?

A. \$188,200.

Q. How much past due paper did the Fairbanks Banking Company have on hand as an asset on August 14, 1908, and which was never paid?

A. \$95,042.36.

Q. What is your next charge to treasury stock?

A. The next entry is on the 18th.

Q. Of what?

A. It shows here several following dittoes of the date of August but I think that is a mistake in the date, and that it should be September. The ticket I think I can find in September tickets, which I have not here.

Q. You haven't the debit ticket for that?

A. Not for September 18th, \$1500. If you are going all the way through these, I had better get the

(Testimony of Sidney Stewart.)

rest of these tickets. [288]

(Witness withdraws from courtroom, and shortly returns.)

Q. I believe you testified about the debit of September 18th?

A. That is an error on the books here.

Mr. HEILIG.—We object to the statement of the witness about an error on the books.

Mr. RIDER.—Q. What does that debit slip show?

A. The debit slip is of date September 18, 1908, debit treasury stock, Oscar Goetz \$1,000, initialed "J." Debit treasury stock Vedine refund \$500, initialed "J."

Q. Now, on September 18, 1908, what were the total assets of the bank as shown by its books?

A. \$1,462,874.27.

Q. And what were the total liabilities?

A. \$1,473,635.80.

Q. How much capital stock was outstanding on that date? A. \$186,700.

Q. What amount, if any, of past due paper was carried by the bank as an asset on September 18, 1908, and which was never paid? A. \$94,512.36.

Q. What is your next item of charge to treasury stock? A. Under date of October 23, \$200.

Q. What does that relate to?

A. Debit treasury stock, McDonald stock, 2 shares released \$200. It is initialed "D."

Q. On October 23, 1908, what were the total assets of the bank as shown by its books?

A. \$1,478,500.09.

(Testimony of Sidney Stewart.)

Q. What were the total liabilities?

A. \$1,484,836.66.

Q. What was the amount of the capital stock outstanding on that [289] date? A. \$186,500.

Q. What amount, if any, of past due paper was carried as an asset on that date by the bank, which was never paid? A. \$94,437.36.

Q. What is the next charge to treasury stock?

A. November 19th.

Q. What is it? A. \$11,000.

Q. What does it consist of?

A. Debit treasury stock, number 25, B. E. Johnson, \$1,000; number 59, Strandberg, \$10,000 refunded; total \$11,000. Initialed "D."

Q. That is November 19th, is it not?

A. Yes, sir.

Q. On that date what were the total assets of the bank as shown by its books? A. \$1,237,256.46.

Q. What were its total liabilities?

A. \$1,245,876.02.

Q. What amount of capital stock was outstanding? A. \$175,500.

Q. What amount of past due paper, if any, was carried as an asset by the bank on that date, which was never paid? A. \$94,437.36.

Q. What is your next charge?

A. November 25th, \$1,000.

Q. What is that item?

A. Debit treasury stock, Emma Strandberg, \$1,000. Initialed "J."

Q. On that date, November 25th, what was the

(Testimony of Sidney Stewart.)

total assets of the company?

A. \$1,177,594.61. [290]

Q. What were its liabilities?

A. \$1,184,802.79.

Q. And the outstanding capital stock?

A. \$174,500.

Q. What amount of past due paper was carried as an asset by the bank on that date, which has never been paid? A. \$94,437.36.

Q. What is your next charge?

A. January 12, 1909, \$200.

Q. To what stock does that relate?

A. Debit treasury stock, F. E. Johnson, \$200.

Initialed "J."

Mr. RIDER.—It is written in the petition December 12, 1909.

Q. On January 12, 1909, what were the total assets of the corporation as shown by its books?

A. \$1,054,028.46.

Q. And the total liabilities? A. \$1,053,638.36.

Q. The amount of capital stock outstanding?

A. \$174,300.

Q. What amount of past due paper was carried by the bank on that date, which has never been paid?

A. \$93,432.19.

Q. What is the next charge?

A. February 9, 1909.

Q. What is it? A. \$200.

Q. What does it relate to?

A. Debit treasury stock, number 10, John Clifford, 2 shares redeemed, \$200. Initialed by "D."



(Testimony of Sidney Stewart.)

Q. What is your next charge?

A. February 19, \$500.

Q. What makes it? [291]

A. Debit treasury stock, George Jestel, \$500. Initialed "J."

Q. On February 19, 1909, what were the total assets of the bank as shown by its books?

A. \$1,013,747.55.

Q. What were its total liabilities?

A. \$1,014,439.45.

Q. How much capital stock was outstanding?

A. \$173,600.

Q. What amount of past due paper was carried by the bank as an asset which was never paid?

A. \$95,057.80.

Q. What is your next charge to treasury stock?

A. June 10th, \$1,000.

Q. To what does it relate?

A. Debit treasury stock, Hart & McConnell, \$1,000. Initialed "J."

Q. On June 10, 1909, what were the total assets of the bank, as shown by its books? A. \$1,146,380.14.

Q. And what were its total liabilities?

A. \$1,147,835.97.

Q. Now, on that date, what was the item of stocks carried by the bank? A. \$400,199.

Q. What did that consist of?

A. That consisted of \$341,949, being the Gold Bar, and \$58,250, First National Bank.

Q. On that date, June 10, 1909, what amount of past due paper was carried by the bank, which has

(Testimony of Sidney Stewart.)

never been paid?

A. The total past due paper and unpaid is \$101,-772.80.

Q. The next charge to treasury stock?

A. September 21, 1909, \$1,000. [292]

Q. What does that consist of?

A. Debit treasury stock, number 21, 5 Louis Enstrom, #22, 5 Oscar Enstrom; total \$1,000. Initialed by "D."

Q. On that date, September 21, 1909, what were the total assets of the bank, as shown by its books?

A. \$1,470,418.19.

Q. And its total liabilities? A. \$1,447,386.16.

Q. Total amount of capital stock outstanding?

A. \$171,600.

Q. Tell the total amount of stocks carried by the company as an asset. A. \$651,824.

Q. Composed of what?

A. There was \$341,949 Gold Bar Lumber Company, \$250,000 Washington-Alaska Bank, and \$59,-875 First National Bank.

Q. What amount of past due paper was carried by the bank on that date in its assets, and which have never been paid? A. \$124,716.52.

Q. What is the date of the next charge to treasury stock? A. October 28, \$1500.

Q. Consisting of what?

A. Debit treasury stock; D. Michie account Parkin stock \$1,000. Aleck Cameron \$100. Edith McCormick \$200, J. W. McCormick \$200. Total \$1500. Stock notes credited. B. R. Initialed by "J."

(Testimony of Sidney Stewart.)

Q. On October 28, 1909, what was the total amount of assets of the bank, as shown by its books?

A. \$1,324,913.53.

Q. And the total amount of liabilities?

A. \$1,298,055.85.

Q. Amount of capital stock outstanding?

A. \$170,100. [293]

Q. What stocks were carried by the bank on that date? A. \$651,824.

Q. They constitute the same stocks that made up that item before? A. Yes, sir, the same stocks.

Q. What amount of past due paper was carried by the bank as an asset on that date, and which has never been paid? A. \$124,523.45.

Q. What is the next charge to treasury stock?

A. November 10th, \$500.

Q. What is it made up of?

A. Debit treasury stock, Francis H. Taylor, cancelled, \$500. Initialed by "J."

Q. On what date, November 10th, 1909, what were the total amount of assets of the bank, as shown by its books? A. \$1,313,853.06.

Q. And its total liabilities? A. \$1,304,956.31.

Q. Its outstanding capital stock? A. \$169,600.

Q. And it had as an asset, stocks in a certain amount? A. \$651,824.

Q. They are the same stocks that you described before, are they? A. Yes, sir.

Mr. RIDER.—In order not to be continually referring to that item of stocks, will you concede that that continued on down until the time the First Na-

(Testimony of Sidney Stewart.)

tional Bank stock is sold?

Mr. McGINN.—Yes, sir.

Mr. RIDER.—Q. What amount of past due paper was carried by the bank on that date as an asset, which was never paid?

A. \$124,023.45.

Q. Your next charge to treasury stock?

A. November 23d, \$500. [294]

Q. What is that?

A. McConnell stock, 5 shares charged back, \$500.

Q. Heading from the debit slip?

A. Yes, sir. Initialed by "J."

Q. On that date, what were the total assets of the bank, as shown by its books? A. \$1,302,286.17.

Q. Its total liabilities? A. \$1,272,395.43.

Q. Total outstanding capital stock?

A. \$169,100.

Q. The total amount of past due paper carried by the bank as an asset on that date, and which was never paid? A. \$129,326.23.

Q. What is the date of that next charge?

A. January 18, 1910, \$500.

Q. What is that?

A. Debit treasury stock, Horton & Dunham, 5 shares, \$500. Initialed "J."

Q. On January 18, 1910, what were the total assets of the bank, as shown by its books?

A. \$1,167,092.16.

Q. Its total liabilities? A. \$1,155,107.53.

Q. The amount of outstanding capital stock?

A. \$168,600.

(Testimony of Sidney Stewart.)

Q. The amount of stocks carried as an asset?

A. \$654,449.

Q. What does that consist of?

A. \$341,949 Gold Bar Lumber Company, \$250,000 Washington-Alaska [295] Bank, and the balance First National Bank.

Q. What would be the amount of the First National Bank stock? A. \$62,500.

Q. On that date what was the total amount of past due paper carried as an asset by the bank, as shown by the books, and which has never been paid?

A. \$108,714.34.

Q. That completes the debit charges to treasury stock as far as you were able to give them when you first read them into the record. Now, have there been any other charges to treasury stock shown on any other book?

A. Under date of October 25, 1910, a charge of \$10,000.

Q. What is that item made up of?

Mr. CLARK.—We object to any testimony of this unless it is shown to have been with the knowledge and consent of the board of directors. It is not connected with the board of directors in any manner, and it is not binding upon them unless it is shown that they had knowledge of it, or that it was done with their knowledge and consent.

The COURT.—I suppose it will be connected with some of them; if not, it will not be considered. Objection overruled, subject to the objection.

A. This is on the regular form of debit ticket,



(Testimony of Sidney Stewart.)

marked: "Copy. Original taken by Proctor 1/17/12, and in his possession."

Mr. CLARK.—We object, unless there is some evidence that that is a correct copy.

Mr. RIDER.—You have not the original debit slip.

Mr. CLARK.—It is not contended that it is an original entry.

The COURT.—Q. Do you know who made the copy?

A. It is in Mr. Proctor's handwriting.

Mr. CLARK.—He is not an officer of the bank, and we are not bound [296] by any copies that Mr. Proctor may have prepared. We don't know that that is a correct copy of the original.

Mr. RIDER.—I will see if I can prove it in some other way.

Q. Have you there the stock-book containing the certificates of capital stock that were issued to stockholders of the Washington-Alaska Bank, formerly the Fairbanks Banking Company?

A. The certificates of the Fairbanks Banking Company, a corporation.

Q. Have you the original certificate of stock issued to John L. McGinn? A. Yes, sir.

Q. What is the number of it? A. Number 67.

Q. Is there any indorsement of it being cancelled?

A. On the face— (Interrupted.)

Mr. CLARK.—We object. It speaks for itself.

Mr. RIDER.—I can't get that whole book in the record. That is pasted in there. If you want to

(Testimony of Sidney Stewart.)

examine it, they can. I will read into the record such part of it as I can.

Mr. CLARK.—It is a conclusion.

Mr. RIDER.—What is indorsed on there is not a conclusion.

The COURT.—Answer the question.

Mr. CLARK.—We object, because they have already testified that it was charged on October 25th, and from the writing on that, it seems to appear that it was cancelled long before that time. It doesn't correspond with the proof.

The COURT.—Objection overruled. (Defendants except.)

Mr. RIDER.—Q. Read what is written across the face of the certificate.

A. Written in red ink across the face: "Cancelled October 13, 1910. F. W. Hawkins, Secretary."  
[297]

Mr. CLARK.—That goes in subject to our objection, that it is not shown that he had any authority to cancel it.

The COURT.—Yes.

Mr. RIDER.—Q. What other original entries or records have you respecting that certificate of stock?

A. Under date of October 13, 1910, in the loans and discounts register is recorded a note number 03647, maker F. W. Hawkins, amount \$6,000, noted as being due November 1, 1910; proceeds \$6,000. And noted as being paid October 25, 1910.

Mr. CLARK.—We move that that last testimony be stricken out. It shows it was surrendered and

(Testimony of Sidney Stewart.)

cancelled and a note given, which note was afterward marked "paid."

The COURT.—Motion denied.

Mr. RIDER.—If you want special proofs in this matter, we will try to make them.

Q. Can you get the slips which relate to that entry which you have just read?

A. I will have to have the deposit slips.

Q. Haven't you got them here? A. No.

Mr. RIDER.—We will have to pass that item now, and we will try to find that note and the records and show that transaction.

The COURT.—Very well.

Mr. RIDER.—Q. Now, Mr. Stewart, will you read the credit entries appearing in the treasury stock account?

A. Under date of March 16, 1908, credit \$3800.

March 17	1000.
----------	-------

March 18	100.
----------	------

March 20	200.
----------	------

March 23	7000.
----------	-------

May 8	100.
-------	------

June 10	200.
---------	------

May 14, 1910	1000.
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Q. What year is that?

A. 1908, except the last entry. [298]

Q. They are all during the year 1908 except the item of May 14, 1910, which you read?

A. Yes, sir.

Q. Those credits to treasury stock, that is, treasury stock being credited with those items means

(Testimony of Sidney Stewart.)

what, as a bookkeeper?

A. It means issue of stock.

Q. Issue of the capital stock?      A. Yes, sir.

Q. Have you read all of the items of credit to the treasury stock account, as shown on the books of the bank?      A. Yes, sir.

Q. Without taking the time to read who those certificates of stock were issued to—

Mr. RIDER.—I will state to the court that the copy which I will prepare of that paper book entry will show that fact, and then Mr. Stewart can verify it, and we can save that much time in the morning, and I will furnish the court with a copy of it also.

Q. Now, Mr. Stewart, going back to the debit charges to treasury stock, can you tell from the books and papers that you have there, what the bank gave in return for these certificates of stock which are charged to the treasury stock account?

A. Well, in some cases the stock note was cancelled, and in some cases there was cash paid for the stock.

Q. Now, I think I will have to go into the Washington-Alaska Bank of Washington before I can go any further with this transaction. You say you haven't it here?      A. I have some portion of it.

Q. Have you have that portion of it that shows its financial condition as shown by its books on September 13, 1909?      A. Yes, sir.

Q. Then turn to the books of the Washington-Alaska Bank of Washington on September 13, 1909. What was the total amount of its assets, as shown

(Testimony of Sidney Stewart.)

by its books, on that date?

A. \$2,087,866.43. [299]

Q. What was the amount of its liabilities, as shown by its books, on that date? A. \$2,026,616.88.

Q. How much capital stock was outstanding?

A. \$150,000.

Q. What amount of loans did it have on that date, as an asset— (Interrupted.)

Mr. McGINN.—Was that at the close or opening of September 13th?

A. At the close. \$258,546.35.

Q. On that day, what was the total amount of past due paper held by the Washington-Alaska Bank, as an asset?

A. I don't believe I have that figure.

Q. Have you computed, then, the total amount of past due paper held by the Washington-Alaska Bank of Washington as an asset, and which was never paid, on September 13, 1909? A. Yes, sir.

Q. What does that amount to? A. \$88,462.53̄.

Q. Have you gone through the records of the Washington-Alaska Bank of Washington for the purpose of investigating its interest account, so as to determine whether or not it took *took* credit to its interest account for interest and carried it as an asset, amounts which had not been paid?

A. Yes, sir.

Q. In taking a note from a borrower, was it the custom of the Washington-Alaska Bank of Washington to take that note for the principal and the note to draw interest from that date, or to take it for the



(Testimony of Sidney Stewart.)

principal amount, plus interest computed to a day in the future? [300]

A. It was. On most of their notes they took the note and computed the interest to maturity, which was added to the principal.

Q. On the note, then, the face amount of the note would be for the principal, plus interest to maturity.

A. Yes, sir.

Q. That item of interest to maturity was how carried on the books of the bank; how would they carry that note after they would take it that way, including interest and principal?

A. It would be carried in their loans for the face of the note.

Q. For the full face of the note? A. Yes, sir.

Q. The loan account would be then charged with the face of the note, which would be principal and interest? A. Yes, sir.

Q. Have you gone through their loans for the purpose of computing the amount, if any, of the interest on these notes which is included in the face of the notes, and which has never been paid?

A. Yes, sir.

Q. On the 13th of September, 1909, was the Washington-Alaska Bank of Washington carrying in its loan account any item of interest on notes given in the manner you have described, which has never been paid?

A. Yes, sir. You mean, the interest has never been paid?

Q. Yes, sir. A. Yes, sir.

(Testimony of Sidney Stewart.)

Q. In what amount? A. \$16,911.73. [301]

Mr. RIDER.—Q. Is that amount of uncollected interest, \$16,911.73, included in the item of Loans \$258,546.35 that you read us, being one of their assets?

A. It is included in the principal amount of those loans. There is one matter in connection with the Wood stock, in addition to what was shown yesterday, that I wish to return to. I wish to read from the minutes of the meeting of the executive committee held on June 29, 1908, that portion shown, as follows (Reads):

**[Plaintiff's Exhibit "EE"—Part of Minutes of Meeting of Executive Committee, June 29, 1908.]**

“A communication from Mr. R. C. Wood was read. It requested that his resignation, which had been handed in at the previous meeting, be taken up and passed on. After full discussion by the committee, it was moved by Claypool, seconded by Stark, that Mr. Wood's resignation be accepted to be effective on the close of business on June 30, 1908.”

(Marked Plaintiff's Exhibit “EE.”)

Q. Have you with you the certificate of deposit in the sum of \$13,000.00 issued to Mr. Wood, referred to on yesterday?

Mr. McGINN.—We object to all of that question, as calling for a conclusion of the witness as to whether or not this stock was issued.

Mr. RIDER.—I said “Certificate of deposit.”)

(Testimony of Sidney Stewart.)

(Witness hands same to Mr. Rider.)

I wish to offer in evidence this certificate of deposit to show that it was issued by Mr. B. R. Dusenbury, as assistant cashier, on June 30, 1908.

Mr. McGINN.—We object as immaterial. [302]

Mr. RIDER.—I will read further from the minutes of the executive committee of June 29, 1908, which has been offered in evidence as exhibit “EE,” following the acceptance of the resignation of Wood to be effective at the close of business on June 30, 1908 (Reads):

“It is moved by Mr. Hill, seconded by Mr. Stark, that Mr. B. R. Dusenbury be elected cashier to succeed Mr. R. C. Wood, who resigned. (Carried).”

Q. Mr. Stewart, have you with you the books of the partnership of the Fairbanks Banking Company, showing the entries in March, 1908?

A. Some of them.

Q. Will you turn to those books and show the entries that were made respecting the winding up of the business of that partnership, and showing the distribution of the profits to the partners?

Mr. McGINN.—To which we object as irrelevant, incompetent and immaterial, and not binding on any of the defendants in this case.

Mr. RIDER.—I propose to show by those book entries there that there is a notation there of \$52,000 that was divided between Barnette, Hill and Wood, being the excess coming to them referred to in the contract, and a corresponding notation showing that that was paid by capital stock of the Fairbanks

(Testimony of Sidney Stewart.)

Banking Company, and showing that the amount distributed to Mr. Wood was \$13,000.

The COURT.—You can follow that up with other testimony.

Mr. McGINN.—We object to that as not binding on Wood; Wood not being here at that time.

The COURT.—It depends on who had knowledge of the entry, and how it was made.

Mr. RIDER.—Wood was a member of that partnership at that time.

(Objection overruled. Defendants excepted.)

[303]

A. The general ledger of the Fairbanks Banking Company, a partnership, page 284, in stocks account—I will charge that and take the partnership Fairbanks Banking Company's cash-book, on page 264, under date of March 16, 1908, there is a general entry charging stocks account \$52,000; to credit surplus account \$52,000. Memorandum: "E. T. Barrette \$26,000.; James W. Hill, \$13,000; R. C. Wood, \$13,000; 520 shares of F. B. Co. Inc."

Q. Going now to the affairs of the Washington-Alaska Bank of Washington, on September 13, 1909, Mr. Stewart, have you examined the profit and loss account of the Washington-Alaska Bank of Nevada showing the notes charged off by it to profit and loss on December 31, 1909?

A. There was no Washington-Alaska Bank of Nevada then.

Q. I mean the Washington-Alaska Bank of Washington. A. Yes, sir.

(Testimony of Sidney Stewart.)

Q. Have you examined it and determined whether or not any notes were charged to profit and loss on December 31, 1909, which were in the bank, carried by it as an asset on September 13, 1909?

A. Yes, sir. [304]

Q. What did you find in that respect?

A. In their loan tickler, Washington-Alaska Bank of Washington, under date of December 31, 1909, there is a list of loans, the total of which is \$8,408.61, the amount of which is charged to profit and loss. All of these were held, with the exception of one note, I believe—\$8,178.75 of which was held September 13, 1909.

Coming now to the affairs of the Fairbanks Banking Company, on April 12, 1910, and also of the Washington-Alaska Bank on that day, I wish to read from the minutes of the meeting of the board of directors of the Fairbanks Banking Company held on April 12, 1910. (Reads):

**[Plaintiff's Exhibit "GG"—Minutes of Meeting of Board of Directors of Fairbanks Banking Co., April 12, 1910.]**

"Minutes of the meeting of the board of directors of the Fairbanks Banking Company.

Fairbanks, Alaska, April 12, 1910.

The regular meeting of the board of directors of the Fairbanks Banking Company was held at the office of the corporation at Fairbanks, Alaska, at 8-30 P. M. E. T. Barnette, President, presiding. Members present; E. T. Barnette, R. H. Wood, J. L.



(Testimony of Sidney Stewart.)

McGinn, R. Brumbaugh, J. A. Jesson, J. A. Jackson, Dave Yarnell."

I will mark the parts I read as I read them.

"Upon motion of Brumbaugh, seconded by Jesson, the present officers were re-elected for the ensuing six months, viz., President, E. T. Barnette; Vice-president, J. L. McGinn; Second vice-president, L. N. Jesson; Cashier, secretary and treasurer, J. A. Jackson; Assistant cashier, L. E. Wing. The following-named persons were then named as the executive committee for the ensuing term, in conjunction with the president and vice-president; J. A. Jesson, R. C. Wood and J. A. Jackson.

Mr. Wood informed the board that the Washington-Alaska [305] Bank had declared a dividend of 33-1/3 per cent on its capital stock, amounting to \$50,000, which would be paid to the Fairbanks Banking Company, owners of the stock.

It was then moved by Wood, seconded by Jesson, that \$25,000 of this amount be credited to stock account, thus reducing the value at which this stock is held, and the other \$25,000 be credited to the undivided profits. Motion carried." "Moved by Jesson, seconded by McGinn, that the Fairbanks Banking Company declare a dividend of 20 per cent on its paid-up capital stock, namely \$168,600. Motion carried." That is offered as an exhibit.

(Marked as Plaintiff's Exhibit "GG.")

Q. Mr. Stewart, will you read into the record the condition of the Fairbanks Banking Company as to

(Testimony of Sidney Stewart.)

its assets and liabilities on April 12, 1910, as shown by their books?

A. Under date April 12, 1910, as shown by the daily statement-book of the Fairbanks Banking Company, a corporation, there was due from Banks of B. N. A. \$2,593.92; Bank of California, \$2,898.33; due to Dome City Bank \$116.30; due from Dexter Horton & Company \$199.83; due from First National Bank \$6.15; due to National Park Bank \$5,750.87; due to National Bank of Commerce \$65,737.96; due to Scandinavian-American Bank \$9,663.88; due from Seattle National Bank \$5.54; due from Vallez Bank & Mercantile Company \$577.39; due to sundried old bank \$2,448.52; due from Canadian Bank of Commerce, \$50; Coin on hand \$92,985.90; dust on hand [306] \$1,908.13; Treasury stock \$131,400; sundry stocks \$654,449; real estate \$26,834.63; real estate No. 2 \$3,968.28; bad debts \$43.62; loans and discounts \$338,410.94; expenses \$13,768.34; interest savings \$16.76; overdrafts \$12,151.52. Footing \$1,198,550.80.

Those items I have read under the side marked "resources," the "due to banks" are stated in red ink; and "due from banks" are stated in black ink.

Under the liability side:

Capital stock \$300,000; deposits \$372,420.55; savings deposits \$504,551.71; interest \$7,903.94; interest account banks \$265.50; exchange \$974.04; save deposit vaults \$555; rents \$1165.00; dust exchange \$476.98; profit and loss \$9,974.78; warehouse \$290.50. Footing, \$1,198,550.80.

(Testimony of Sidney Stewart.)

Q. Is that a statement showing the condition at the opening or the close of business of April 12, 1910? A. That is the close of business.

Q. From that statement have you, or can you make a computation as to the amount of profit, of any, the Fairbanks Banking Company had on that day—undivided profit, I mean?

A. As shown, it would leave a credit to profit of \$7,749.82.

Q. Now, add to that the \$25,000 placed to the credit of undivided profits by the resolution of the board of directors passed on the evening of April 12, 1910, which has been read in evidence.

A. Yes, sir.

Q. What does that make? A. \$32,749.82.

Q. What was the amount of the dividend of 20 per cent declared by the board of directors on their stock outstanding on that [307] day, as stated by their resolution; 20 per cent dividend on \$168,600 worth of stock? A. \$33,720.

Q. What is the difference between that and the amount of their undivided profits? A. \$970.18.

Q. On April 12, 1910, what stocks were carried as an asset by the Fairbanks Banking Company?

A. \$341,949 Gold Bar Lumber Company; \$62,500 First National Bank; \$250,000, Washington-Alaska Bank of Washington.

Q. Making the total of stock that you read from the daily statement? A. Yes, sir.

Q. On April 12, 1910, have you computed the amount if past due paper carried by the Fairbanks

(Testimony of Sidney Stewart.)

Banking Company as an asset and which has never been paid?     A. Yes, sir.

Q. What is it?     A. \$111,243.51.

Mr. RIDER.—Will you gentlemen require me to trace through these books each of the dividends belonging to those stockholders paid to the stockholders? It will take considerable time to do it.

Mr. McGINN.—We are willing to admit that upon the 12th day of April, 1910, a dividend was declared by the Fairbanks Banking Company in the amount of \$33,720, which amount was distributed among the then stockholders of the Fairbanks Banking Company according to the respective amounts of stock held by them individually; that in some instances the money was placed to the account or deposited to the credit of some of the stockholders of the bank in the bank; in other instances [308] the dividend was applied upon the notes or debts that some of the stockholders owed the Fairbanks Banking Company; that in some instances the dividend was applied upon the stock notes of some of the stockholders.

Mr. RIDER.—And that that which was placed to their credit in their accounts was drawn out by them?

Mr. McGINN.—It was subject to be drawn out. In other words, that all that was not applied upon the indebtedness of the stockholders was placed in their open accounts, subject to their check. You want the further admission; and that part was paid in cash, over the counter of the bank, and part remitted to stockholders on the outside. That covers

(Testimony of Sidney Stewart.)

everything, I think.

Mr. RIDER.—Yes, sir.

Q. Mr. Stewart, have you the books of the Washington-Alaska Bank of Washington of April 12, 1910? A. Some of them. Yes, sir.

Q. Have you the daily statement-book?

A. Yes, sir.

Q. As shown by that daily statement-book, what was the total amount of loans carried by the Washington-Alaska Bank on the 12th day of April, 1910, as an asset? A. \$330,253.31.

Q. Have you made a computation for the purpose of determining what amount of those loans were past due on April 12, 1910, and have never been collected?

A. Yes, sir.

Q. What was the amount? A. \$85,645.61.

Q. Did the Washington-Alaska Bank on that day, April 12, 1910, have in its assets any paper of the Fairbanks Banking Company?

A. Yes, sir. [309]

Q. What?

A. It shows an asset here: "F. B. Co. \$125,000." Their daily statement-book don't state there what it is.

Q. Can you trace it out and tell us what it is?

Mr. McGINN.—We admit they held a certificate of deposit in that amount.

Mr. RIDER.—Q. On that day, did they hold a certificate of deposit of the Fairbanks Banking Company in the sum of \$125,000?

Mr. McGINN.—Secured by stock of the Fairbanks



(Testimony of Sidney Stewart.)

Banking Company.

Mr. RIDER.—There is no admission about **any** security for it at all. Do you withdraw your admission about the certificate of deposit?

Mr. McGINN.—No.

Mr. RIDER.—Q. On that day, April 12, 1910, as shown by the books of the Washington-Alaska Bank of Washington, what was the amount of its total undivided profits? A. In the net amount?

Q. Yes, as shown by its books. A. \$57,081.76.

Mr. RIDER.—I wish now to read from the minutes of a special meeting of the trustees of the Washington-Alaska Bank, held on Tuesday, April 12, 1910, by the Washington-Alaska Bank of Washington (Reads):

“Minutes of a special meeting of the trustees of the Washington-Alaska Bank, held in the Barnette Block in the town of Fairbanks, Alaska, on Tuesday, April 12, 1910, at 4 o'clock P. M.; notice and call of meeting having been given and made by the president.

Present: E. T. Barnette, George C. Wesch, Richard C. Wood. The meeting was called to order by the president. Mr. A. R. Heilig was thereupon unanimously elected secretary [310] *pro tem*.

The president announced that the corporation held undivided profits in a sum in excess of \$50,000, over and above the capital stock; and thereupon, on motion duly seconded and carried, it was unanimously voted that a dividend of thirty-three and one-third per cent on the capital stock be declared, and as soon

(Testimony of Sidney Stewart.)

as practicable paid to the stockholders of said company.”

I cannot introduce that in evidence as an exhibit other than by reading, because it is a part of a large book, but I will supply a copy of that for the record, as an exhibit.

The COURT.—It may be admitted.

(Copy thereof to be marked Plaintiff’s Exhibit “HH.”)

Mr. RIDER.—Now, I wish to read from the By-laws of the Fairbanks Banking Company a portion of Section 9 of Article 2, which article is entitled “Directors,” and Section 9 is entitled: “Powers of directors.” The third clause of Section 9, under heading “Powers of directors” (Reads):

**[Plaintiff’s Exhibit “HH”—Portion of By-laws of Fairbanks Banking Co.]**

“To declare dividends semi-annually out of the net profits of the corporation earned up to the 30 day of June of each year, and from the 30 of June to the 31 day of December of each year; said dividends to be declared by the board of directors at the first regular meeting held subsequent to the 30th day of June and the 31st day of December of each year. Provided, however, that no dividend shall be declared or paid that tends to curtail the effective operation of the business of the corporation.” I will supply the record with a copy of that.

The COURT.—It may be admitted. [311]

Q. (Mr. STEWART.) I present you with three

(Testimony of Sidney Stewart.)

notes, executed by the Fairbanks Banking Company and payable to the Washington-Alaska Trust Company, dated April 12, 1910. Can you identify them as notes in the vaults of the receiver pertaining to the affairs of the Fairbanks Banking Company?

A. Yes, sir.

Mr. RIDER.—I offer in evidence these three notes for the purpose of showing that on the day the Fairbanks Banking Company declared a dividend it borrowed \$150,000. The three notes are dated April 12, 1910, each in the sum of \$50,000, and each payable on demand to the Washington-Trust Company of Seattle, and each signed by Fairbanks Banking Company, by E. T. Barnette, President.

Mr. McGINN.—Endorsed by whom?

A. Endorsed by E. T. Barnette, each of them.

(Marked Plaintiff's Exhibits "JJ," "KK" and LL.")

Mr. RIDER.—At this time I would like to offer in evidence the general corporation laws of Nevada under which this corporation the Fairbanks Banking Company, afterwards known as the Washington-Alaska Bank of Nevada, was incorporated, and read certain sections of that incorporation law. [312]

"Capital Stock Not To be Reduced, Etc.—Proviso.—Sec. 68. It shall not be lawful for the trustees or directors to make any dividend except from the net profits arising from the business of the corporation; nor to divide, withdraw, nor in any way pay to the stockholders, or any of them, any part of the capital stock of the company; nor to reduce the

(Testimony of Sidney Stewart.)

capital stock, unless in the manner prescribed in this Act, or in accordance with the provisions of the certificate or articles of incorporation; and in case of any violation of the provisions of this section, the directors or trustees under whose administration the same may have happened, except those who may have caused their dissent thereto to be entered at large on the minutes of the board of directors or trustees at the time, shall in their individual and private capacities, be jointly and severally liable to the corporation, and the creditors thereof, to the full amount so divided, withdrawn or reduced. or paid out; provided, that this section shall not be construed to prevent a division or distribution of the capital stock of the company which shall remain, after the payment of all of its debts, upon the dissolution of the corporation or the expiration of its charter; provided, also, that this section shall not prevent the retirement or conversion of either stock or bonds or the distribution of the earnings or accumulations of the corporation as provided for in the articles of certificate of incorporation.” [313]

Q. I show you this book referred to this morning, and upon which is the number 399 pasted on, and ask you by whom that was done; who pasted that number 399 on the book?

A. To the best of my knowledge and belief John L. Proctor.

Q. Who was John L. Proctor?

A. He came here I believe 2 years ago, wasn't it, and was representing the Department of Justice.

(Testimony of Sidney Stewart.)

Q. Do you know who pasted on this typewritten statement here as to what Hawkins thinks this book is?

A. I believe he tagged and marked these books. I didn't see him do it.

Q. You know he numbered all of those books?

A. Yes, sir.

Q. And made out a list of them, did he not?

A. Yes, sir.

Q. Have you got that list?      A. Yes, sir.

Q. I will ask you whether or not in that list this book which is numbered 399 is referred to.

Mr. RIDER.—I object to that as irrelevant, incompetent and immaterial.

Mr. McGINN.—For the purpose of showing this is one of the books and records of the Washington-Alaska Bank.

The COURT.—I do not think that would show it. Objection sustained.

Mr. McGINN.—Q. That book has been in the custody of the receiver ever since you have been connected with the receivership, has it not? [314]

A. Excepting during the time it was at Valdez.

Q. By whom was it taken to Valdez?

A. Well, it was taken there under subpoena issued to the receiver to come and bring these books.

Q. What books were particularly specified, or were all the records specified?

A. As listed here (exhibiting list).

Q. And he brought that book with him.

A. Yes, sir.



(Testimony of Sidney Stewart.)

Q. That is the list that was made up by proctor.

A. Yes, sir.

Q. Do you know whose handwriting that book is in?

A. I think that is Mr. Dusenbury's handwriting.

Q. And it is initialed "D"?

A. Initialed "D," yes, sir.

Q. And secretary? A. Yes, sir.

Q. Assistant cashier? A. Yes, sir.

Q. And he always signed "D"?

A. Initialed his entries.

Q. This book, all the way through, or a part of it, shows those entries, or some of them? A. Yes.

Q. I will ask you to refer to this book I have been speaking of, and which is marked No. 399, and see whether you can determine from that book whether there was any security for this note.

Mr. RIDER.—The plaintiff objects to the introduction of testimony from that book until it is shown that it was a book of entry of the bank, and part of the records of the bank.

The COURT.—Is it your contention that that is not one of the books of the bank? [315]

Mr. RIDER.—I don't know a thing about it. Mr. Stewart testified it was a book he saw in the bank, but it doesn't seem to have entered into his calculations. It has not been identified as a book of the bank.

The COURT.—It seems to me it should be identified in some way.

Q. The next we have here is Tanana Electric Com-

(Testimony of Sidney Stewart.)

pany. December 16, 1907, two notes.

A. Yes, sir. (Hands same to Mr. McGinn.)

Q. I wish you would refer to the ledger account of the Tanana Electric Company. Have you got the books of the bank at Cleary of November, 1907? First of all, have you got them [316] of April, 1907, September, 1907, October and November, 1907? First of all, I will ask you what the bank of Cleary was, if you know. A. No, sir.

Q. The Fairbanks Banking Company, during the year 1907, had a branch bank on Cleary Creek, did they not? A. I have heard so.

Q. Have you any of the records of that bank in your possession?

A. There are some, I believe, but I haven't any of them here.

Q. Have you any in your possession showing the account of the Tanana Electric Company with the bank at Cleary—the branch of the Fairbanks Banking Company, during the year 1907?

A. No, sir, not here.

Q. You have them in your possession, or in the possession of the receiver? A. For 1907.

Q. Yes. A. I wouldn't be sure about that.

Q. Will you look them up and find out?

A. Yes, sir.

Q. Will you refer there to the account of the Tanana Electric Company for the month of April, 1907? A. (Opens a book.)

Q. Does that show what advancements, if any, of money were made by the Fairbanks Banking Com-

(Testimony of Sidney Stewart.)

pany to the Tanana Electric Company?

Mr. HEILIG.—What book is that?

A. The deposit ledger.

Mr. McGINN.—Q. Does it show any credit?

A. In April?

Q. Yes. April, 1907. [317]

A. A few small credits during the month of April.

Q. Are there any in any large sum?

A. Not during April. On May 1st there was a credit of \$18,500.

Q. That left them how much on hand at the close of the day of May 1st? A. \$3,135.82.

Q. What amount of checks were drawn out that day?

A. There is one charge of \$6,288.26, and another of \$9,213.38.

Q. Do you know where that went to?

A. No, sir.

Q. Have you any means of tracing it?

A. I believe so.

Q I wish you would.

Mr. RIDER.—I don't see the purpose of that.

Mr. McGINN.—Mr. Rider introduced a telegram, dated November 11, 1907, which was received by the Fairbanks Banking Company on November 11, 1907, in which Mr. Chilberg of the Scandinavian-American Bank advised the Fairbanks Banking Company not to advance any more money to the Tanana Electric Company; and he has introduced telegrams and letters here, seeking to show that it was only by either telegraphic or written communications from

the Scandinavian-American Bank to the Fairbanks Banking Company that the Fairbanks Banking Company advanced to the Tanana Electric Company sums of money. I want to show by the records here that prior to April 30, 1907, when a note for \$18,500 was given by the Tanana Electric Company to the Scandinavian-American Bank, that this money had, prior to that time, been advanced by the bank; and that the same thing occurred prior to September 7, 1907, when there was a note given for \$25,000 to the Fairbanks Banking Company. In other words, I want to show [318] that the Fairbanks Banking Company were making advancements right along to the Tanana Electric Company, and that then the Fairbanks Banking Company would telegraph to the Scandinavian-American Bank; Tanana Electric Company owes us so much money. And then they would wire in to take the note for it; showing that these advances were not made at one time, but over a gradual period of time.

Mr. RIDER.—No dispute that they were made over a gradual period of time. The point of the testimony was that there was no credit given to the Tanana Electric Company on the strength of any guaranty or any expectation to pay from the Scandinavian-American Bank until after the advancements had been made and until they received instructions from the Scandinavian-American Bank to make them. Then, when they received that instruction, they would then enter the credit upon the books of the Fairbanks Banking Company, giving the Tanana

Electric Company credit in those sums, as they did on May 1st for \$18,000, after they had been instructed by the Scandinavian-American Bank to do that. \* \* \*

Mr. McGINN.—If you will admit that these advancements were made from time to time and before these notes were given to the Scandinavian-American Bank; that is, that this \$18,500 was advanced to the Tanana Electric Company from time to time prior to the 1st of May, 1907, and that upon that date or April 30th, a note was obtained for that amount and sent to the Scandinavian-American Bank or held here for the benefit of the Scandinavian-American Bank—

Mr. RIDER.—Upon their direction to take it.

Mr. McGINN.—Owing to the telegram that was introduced in evidence.

Mr. RIDER.—I do not think that telegram was introduced, the one [319] in May directing them to take a note from the Tanana Electric Company. You and I can agree upon what these book entries show, if it will save time. \* \* \* I have identified the date when those advancements were made, but it is my understanding that they were made prior to the time the Scandinavian-American Bank authorized it, and the credit was not given to the Tanana Electric Company until the Scandinavian-American Bank directed this bank to do so.

Mr. McGINN.—With that understanding, I will not go into these matters. The credit was given before to the Tanana Electric Company.



Mr. RIDER.—Given before what?

Mr. McGINN.—Was given before they received any of these.

Mr. RIDER.—The advancements were made to them, but they would be charges. But the credit to the Tanana Electric Company wasn't given.

Mr. McGINN.—You mean; charges to the Scandinavian-American Bank?

Mr. RIDER.—Yes, and the credit to the Tanana Electric Company.

Mr. McGINN.—That is right.

We would like to ask Mr. Rider whether he has in his possession the telegram which called for the telegram of April 30, 1907. It is a telegram from the Fairbanks Banking Company to the Scandinavian-American Bank.

Mr. RIDER.—I presume it will be found in one of the letter-books. I will look it up for you. (Produces letter-book.)

Mr. McGINN.—I desire to read from Book 4, copies of telegrams. (Reads.) On page 339.

“Fairbanks Banking Company. April 24, 1907. Fairbanks, Alaska, April 24, 1907. Scandinavian-American Bank. Tanana Electric Company have deposited with us mortgage for \$100,000, note \$18,500 payable on demand with interest [320] at 6 per cent per annum. Place to our credit when accomplished pay Halliday Machine Company \$6400 on account of your collections 54061, 54167 and 54438. Fairbanks Banking Company.”

Telegram found on page 346:—

Mr. RIDER.—No objection to their being supplied by copies, and marked as their exhibits.

Mr. McGINN.—Same book, page 346 (Reads):

“Fairbanks, Alaska, April 29, 1907.” A telegram. “Scandinavian-American Bank, Seattle, Washington. Refer to our telegram of 24 April, Tanana Electric. What has been done in the matter?

FAIRBANKS BANKING COMPANY.”

Book 4, page 41 (Reads):

“Fairbanks, Alaska, September 2, 1907. J. E. Chilberg. Tanana Electric have deposited note for \$25,000 payable on demand, in favor of Scandinavian-American Bank. Wire funds to bank.”

FAIRBANKS BANKING COMPANY.”

Same book, page 119 (Reads): Telegram.

“November 7, 1907. J. E. Chilberg, Vice-president Scandinavian-American Bank, Seattle, Washington. In reply to your telegram of 6th did not know was overdrawn. Presume that Richmond required deposit for account. Tanana Electric \$69,000. We have advanced \$30,000 against this transfer. Owing to bad condition of the road, have been unable to ship. Will ship \$100,000 Monday.”

Give me Plaintiff's Exhibit “I.” (Same handed to Mr. McGinn by the clerk). We desire to read the whole of the letter of J. E. Chilberg to the Fairbanks Banking Company. Counsel for plaintiff read part of it. [321]

Mr. RIDER.—It is understood, I presume, that the right of counsel to introduce any portion of their case as a part of the plaintiff's case is objected to,

(Testimony of Sidney Stewart.)

and that this is received with that understanding, and with that objection to all of these exhibits that he is offering.

Mr. McGINN.—(Reads Plaintiff's Exhibit "I.")

Now, give me Plaintiff's Exhibit "E." I desire to read from paragraph 23 of the minutes of the meeting of the board of directors. (Objected to as not cross-examination.) Counsel read from section 24, and section 23 is so connected with it that it should be read. It is as follows: (Reads.)

"23. It was moved by Mr. Claypool and seconded by Mr. Robinson that the date heretofore agreed upon by the stockholders prior to incorporation, namely: February 15th, 1908, for the opening of the Fairbanks Banking Company, a corporation, be changed to March 16th, 1908. Carried."

The COURT.—Very well, in regard to that part of it.

Mr. McGINN.—I will proceed to something else now.

Q. Mr. Stewart, the other day when you were upon the witness-stand you were asked concerning the assets and liabilities of the Fairbanks Banking Company upon certain dates. You remember that?

A. Yes, sir.

Q. The accrued interest that was credited to the Fairbanks Banking Company and which amounted to the sum of \$39,642.81 was placed to their credit on March 23, 1908, I believe you stated.

A. It was about that date.

Q. And that was carried as a liability, was it not?

(Testimony of Sidney Stewart.)

A. Yes, sir. [322]

Q. Was any of the interest that accrued then counted as a resource?

A. No, sir, not in the figures that I gave.

Q. I believe you testified that upon the 30th day of June, 1908, the total assets of the Fairbanks Banking Company were \$1,251,924. Is that correct?

A. Yes, sir.

Q. And that the total liabilities of the Fairbanks Banking Company was \$1,290,843.40?

A. Yes, sir.

Q. The difference between the amount of the assets and liabilities was the sum of \$38,918.40?

A. Approximately, without figuring it.

Q. If this accrued interest which was due the partnership, or owing to the partnership, and which was not due until the 31st day of December, 1908, had not been carried as a liability at that time, it would have showed that the assets exceeded the liabilities in about the sum of \$741.44?

A. Without figuring it, approximately. That is, the liabilities would have been reduced the sum of \$39,000.

Q. As a matter of bookkeeping, when this interest which was due upon these notes up to the 16th day of March was charged as a liability against the corporation, should not the interest that had been earned up to that time and which was due to the corporation have been included in the assets?

A. Well, of course, that would be figuring the accrued interest.

(Testimony of Sidney Stewart.)

Q. But you are charging this interest up to the 16th day of March against the corporation, are you not, and in favor of the partnership?

A. I don't quite catch that. [323]

Q. You charge this \$39,642.81 interest as a liability against the corporation? A. Yes, sir.

Q. Well, then, in that case should not the interest that was earned up to that time have been computed and included in the assets?

A. You could consider that as an asset. But the figures I took were just the figures as shown by their daily statement, you understand.

Q. I am taking it as a matter of bookkeeping, in order to show the true condition of the bank at that time. Shouldn't that have been done?

A. It could have been considered as an asset.

Q. The interest that was earned and not collected should have been considered as an asset?

A. Accrued interest on loans is an asset.

Q. But it is not included.

A. It is not included.

Q. It is not included in that statement?

A. No, sir.

Q. You also gave figures as to July 20, 1908, in which you say that the total assets of the Fairbanks Banking Company were the sum of \$1,208,796.76, and that the liabilities were \$1,229,489.68; showing that the liabilities on that date exceeded the assets in the sum of \$20,000. That is correct?

A. Approximately that amount. It would be whatever the difference is.



(Testimony of Sidney Stewart.)

Q. What I have asked you concerning this interest account which had been placed to the credit of the partnership, also will apply to this as well, will it not? A. Yes, sir. [324]

Q. And the same is true as to the assets and liabilities mentioned by you as of date 29th day of July, 1908? A. Yes, sir, the accrued interest.

Q. And as of August 5, 1908. A. Yes, sir.

Q. And of September 18, 1908, and long after, and up to the 31st day of that year?

A. Up to the 31st day of December.

Q. I would like to ask you to refer to the book called the Daily Statement of the 29th day of August, 1908. A. Yes, sir. (Opens book.)

Q. I wish you would take a paper and a pencil, and I will ask you to write down the amount that was due the Fairbanks Banking Company from the Bank of British North America on that date.

A. \$3,132.27.

Q. How much was due this bank from the First National Bank of San Francisco? A. \$2,052.40.

Q. And the National Park Bank of New York?

A. \$17.66.

Q. And the Seattle National Bank?

A. \$714.86.

Q. Valdez Bank and Mercantile Company?

A. \$791.78.

Q. Dexter-Horton? A. \$400,107.39.

Q. Sundry Banks? A. \$100.

Q. Bank of California, San Francisco?

A. \$985.21. [325]

(Testimony of Sidney Stewart.)

Q. J. W. McCormick.      A. \$381.92.

Q. Shepard Brothers and McBride?      A. \$45.94.

Q. Cash on hand?      A. \$193,007.54.

Q. Gold-dust on hand?      A. \$125,891.94.

Q. Can you figure that up and give me the total?

A. \$727,228.91.

Q. Now, I would ask you to refer to the amount due depositors. They kept two accounts there, didn't they? ordinary and savings accounts?

A. Yes, sir.

Q. How much was due to ordinary depositors?

A. \$660,519.41.

Q. How much was due the savings account?

A. \$37,305.03.

Q. How much was due the depositors of the Cleary Branch?      A. Due to Cleary Branch \$59,186.41.

Q. And the Dome City Bank, being a branch bank?

A. \$425.37.

Q. J. P. McCrosky, agent?      A. \$1523.92.

Q. Alaska Bank, Nome?      A. \$1095.74.

Q. Outstanding scrip?      A. \$390.00.

Q. Old Bank collections; not the interest, just the collections?      A. \$2,378.54.

Q. I will ask you to state whether or not those were all the demand liabilities that existed on that date, except the Dexter-Horton matter.

A. Except the Dexter-Horton \$200,000?

Q. Yes, sir. [326]

A. And the Barnette special deposit.

Q. That was not due at that time, I mean, on de-

(Testimony of Sidney Stewart.)

mand; and excepting the savings, which was not a demand either.

A. The Scandinavian-American Bank.

Q. That is a disputed account, is it not?

A. I don't know what the dispute was at that time.

Q. What is the amount of it?      A. \$9,746.19.

Q. Leaving that out, is there anything else there?

A. The capital stock liability.

Q. Just figure up what you have there.

A. \$762,824.42, I make it.

Q. Did you know who J. W. McCormick was?

A. Yes, sir.

Q. He was the agent of the bank, buying gold-dust?

A. I presume that is what this is intended for.

Q. Shepard Brothers & McBride acted as agents for the bank out on Fairbanks Creek.

A. I don't know them.

Q. Those items such as, due from Bank of British North America, First National Bank, etc., are all available cash. You know that.      A. What?

Q. That is available cash, money on deposit in other banks; that is considered available cash?

A. That is considered available, yes, sir.

Q. Ready for instant use.      A. Yes, sir.

Q. I will ask you to state what the difference is between the amount of cash and gold-dust that was available to the bank upon that day, and the amount of its then demand obligations, as you have read them out here. [327]

A. The liabilities exceed these assets in these figures to the extent of \$35,595.51.

(Testimony of Sidney Stewart.)

Q. In other words, the Fairbanks Banking Company, upon the 29th day of August, 1908, had sufficient money to pay all of their depositors—sufficient money on hand to pay all of their depositors, with the exception of about \$35,595.51. Isn't that true?

A. That is what this figures out, from these figures.

Q. There can't be any mistake about those figures?

A. No, sir, that is what the book shows.

Mr. RIDER.—You mean the depositors you have listed.

Mr. McGINN.—All the depositors here; also due depositors at the Bank of Cleary, depositors of the Dome City Bank, J. J. McCormick, the agent of the bank, Alaska Bank at Nome; what was due them; also outstanding scrip \$390; old bank collections amounting to \$2,378. What other liabilities did the bank have on that date, not including the capital stock and not including the Scandinavian-American Bank?

A. E. T. Barnette special, deposit \$200,000, and the bills payable \$200,000.

Q. What do you mean by "bills payable?"

A. That I believe was the Dexter-Horton.

Q. What else?

A. The old bank interest \$39,000.

Q. That was not due at that time, was it? Well, put it down. Anything else? A. \$483.59.

Q. That covers all the liabilities except the capital stock. A. Yes, sir.

Q. What does that amount to?

A. The outstanding capital stock? [328]

(Testimony of Sidney Stewart.)

Q. No. What is the total of those items that you have there?

A. The total of these items is \$439,483.59.

Q. What were your loans and discounts upon that date? A. \$282,836.81.

Q. What was your real estate? A. \$26,817.63.

Q. Gold Bar stock? A. \$341,949.

Q. Can you tell approximately what amount of interest was then due to the bank which had not yet been collected? A. No, I cannot.

Q. Can you tell whether or not that would about off-set that item of \$39,000?

A. That is a pretty hard matter to give, for me.

Q. Could you tell whether it would be ten, twenty or thirty thousand dollars?

A. It would be a mere guess.

Q. You have no means of telling? A. No, sir.

Q. What does that figure up? That is everything there is, is it? A. \$651,603.44.

Q. The total liabilities were \$439,483.59, were they not. A. Those were those four items.

Q. What is the difference between those items?

A. \$212,119.85.

Q. How much was the capital stock upon that date? A. \$300,000.

Q. How much paid up; I mean, subscribed stock, outstanding stock? A. \$188,200.

Q. What is the difference between the surplus and the outstanding stock? [329]

A. The difference between the \$188,000 and the \$212,000?



(Testimony of Sidney Stewart.)

Q. Yes.      A. \$23,919.85.

Q. That does not include any interest that was then due?      A. No, sir.

Q. So, then, you say that the Fairbanks Banking Company upon the 29th day of August, according to their books, had sufficient money to pay all of their depositors and what was due to banks, with the exception of about \$35,000; that is, they had cash in hand practically.

A. Well, it had that cash in hand sufficient to pay, excepting \$35,000, those items I read there.

Q. All their depositors, and what was due banks.

A. Yes, sir, those items.

Q. They had sufficient to pay, with the exception of \$35,000.      A. Yes, sir.

Q. They owed Dexter-Horton at that time \$200,000.

A. Yes, sir.

Q. But they had loans and discounts amounting to the sum of \$282,000.      A. Yes, sir.

Q. So that their loans and discounts, if all but \$82,000 of them were paid, would be sufficient to pay Dexter-Horton.      A. Figuring that way, yes, sir.

Q. They owed Barnette on a special account \$200,000.      A. That is correct.

Q. They were carrying Gold Bar at \$341,000.

A. Yes, sir.

Q. So, Gold Bar, ought to have been sufficient to pay Barnette.      A. Yes.

Q. Then they had the real estate here, and the interest that was [330] still due, to pay the balance of the \$35,000 that was due depositors that they

(Testimony of Sidney Stewart.)

didn't have sufficient money on hand to pay, isn't that true, on the surplus and the loans and discounts?

A. And that interest that belonged to the old bank should be considered here, too.

Q. You have got that included there.

A. It is included in that \$439,000 part of the liabilities there.

Q. But I am asking you about the \$35,000 that they lacked in cash to pay all of their depositors on that date and what was due to banks.

A. Yes, sir.

Q. They had their real estate here and interest on existing loans to pay that, didn't they, and the surplus in the profit and loss account?

A. You figure that the loans would take care of the Dexter-Horton, and Gold Bar take care of Barnette.

Q. Gold Bar would certainly take care of Barnette? A. Yes.

Q. And there was real estate and surplus enough to take care of the \$35,000? A. Yes.

Q. It would do that? A. Yes.

Q. So that they had \$82,000 loans and discounts that exceeded the claim of Dexter-Horton; they had the difference between the \$341,000 which they were carrying Gold Bar for and the \$200,000, to pay this \$39,000 that was due the old institution and to pay the subscribers or stockholders for their stock?

A. I think that would figure out about that way, on those figures. [331]

Q. As a matter of fact, it practically shows that they could pay every depositor on that day in full.

(Testimony of Sidney Stewart.)

Wasn't that the condition of the bank on the 29th day of August?

A. Well, in my statement I have taken the statement just as they show it on this daily statement book.

Q. According to the books. That is where you got all of your statements?

A. Of course. I have not figured it the way you have figured it.

Q. But you can't get away from those figures.

A. I admit, if you were to figure that way, that—  
(Interrupted).

Q. Figure it any way?

A. I say; when I figured the other, these figures from these books was what was called for.

Q. You didn't testify to this date, the 29th?

A. I don't remember.

Q. Do you know whether or not upon that date the depositors of the bank—or that there were depositors of the bank that owed the bank in the aggregate the sum of \$35,000?

A. That there were depositors that owed the bank?

Q. Yes. Notes not due that they owed the bank at that particular time.

A. I have never gone into that.

Q. I want to call attention to the stock that is claimed to have been surrendered, and purchased by the corporation. First— [332]

Q. I want to call your attention to the stock that is claimed to have been surrendered, and purchased by the corporation. First of all, is the stock of B. P.

(Testimony of Sidney Stewart.)

Walsh. Can you tell me whether Walsh had ever paid for his stock or not?

A. He paid \$25.00 on June 3rd.

Q. Did he ever pay any more?

A. No, sir; I believe that is all.

Q. Did the bank ever refund any money to him for his stock? A. Ever refund any money to him?

Q. Yes. Or pay him any money for his stock?

A. They returned to him his \$25.

Q. Where does that appear?

A. On the debit ticket, July 15th.

Q. July 15, 1908. The next is Ed Thomas, July 20th. Do you know whether Ed Thomas ever paid for his stock?

A. Thomas according to a memorandum here—I am not taking this from the books—Thomas paid \$250, and on July 20th—(Intrpd.).

Q. Was there ever any stock issued to Thomas?

A. I don't find his name in the stock-book here.

Q. You don't find where there was any stock ever issued to him? A. No, sir.

Q. I will ask you next as to A. McBride—(Interrupted).

A. Thomas gave his note on March 16th for \$250 and \$750, and he paid \$250, and that was afterwards refunded.

Q. You don't find his name in the stock-book?

A. No, sir.

Q. You don't find where any stock was ever issued to him? [333]

A. No. These notes were given, I believe, and the

(Testimony of Sidney Stewart.)

stock was to be issued when the notes were paid.

Q. His name was never put in the stock-book at all?     A. No, sir.

Mr. RIDER.—Is that Thomas or McBride?

A. Thomas.

Mr. McGINN.—Q. The stock-book should show all of the stockholders.

A. It should. Maybe it is not possibly indexed here. I don't seem to run across it here as being indexed.

Q. We will pass to A. McBride, \$2,000. Was there any stock ever issued to him?

A. McBride gave two notes for stock.

Q. I asked you if there was ever any stock issued to him.

A. He is not shown on the stock ledger, no.

Q. His name doesn't appear as a stockholder in the concern in any way on the books of the company?

A. I don't think there was any stock ever issued to him.

Q. No stock issued, and his name does not appear in the stock-book?     A. No, sir.

Q. We will take up the next one; Antone Letnis, 2 shares.     A. I don't find him on the stock ledger.

Q. His name don't appear as a stockholder of the Fairbanks Banking Company, does it?

A. No, sir.

Q. And there was never any stock issued to him by the Fairbanks Banking Company?     A. No, sir.

Q. A. N. Larsen, 10 shares, it says here in the complaint.     A. The same way with Larsen.



(Testimony of Sidney Stewart.)

Q. Never a stockholder and never any stock issued to him. [334] A. No, sir.

Q. F. E. Johnson.

A. F. E. Johnson appears on the stock ledger.

Q. How many shares? A. Two shares.

Q. Was his stock afterwards returned into the treasury of the corporation?

A. On July 20th, F. E. Johnson, 2 shares. He gave his notes on March 16th. That is George Johnson you are speaking of, I think.

Mr. CLARK.—It says “F. E.”

A. It should be “George Johnson, July 20th.” The stock was not issued to F. E. Johnson until July 20, 1908, 200 shares.

Mr. McGINN.—Q. You say it was issued to him upon that date?

Mr. CLARK.—That is another Johnson. It was F. E. Johnson whose stock was issued July 20th.

Mr. McGINN.—No, that is the day it was supposed to be surrendered. It is F. E. Johnson here.

Q. Was that stock ever surrendered back to the corporation? A. George Johnson, 200 shares.

Q. No. We want F. E. Johnson.

A. F. E. Johnson's was surrendered back.

Q. When was it issued?

A. The stock-book says July 28, 1908.

Q. Was it ever surrendered back to the company?

A. December 12, 1908.

Q. Had he paid anything on his stock?

A. Yes, sir; I think he paid for his stock.

Q. Do you know?

(Testimony of Sidney Stewart.)

Mr. HEILIG.—There is another item “F. E. Johnson” on this list, “December 12, 200 shares.” [335]

A. Well, I can’t tell from the books here, without tracing that up, just how that payment was made of July 28th.

Mr. McGINN.—Q. You don’t know?

A. I don’t recall. I don’t remember.

Mr. McGINN.—We will pass that for the time being.

Mr. HEILIG.—What is that?

Mr. McGINN.—F. E. Johnson. He has nothing there to show whether he paid for it or not and he will look that up.

Q. J. L. Tobin.

A. His name don’t appear on this stock-book.

Q. He was never a stockholder of the corporation?

A. Among the original stock subscription notes, his name appears.

Q. There was never any stock issued to him by the corporation?

A. No, sir; no stock certificate issued to him.

Q. Where the stock has not been issued to these people, it is not included in the paid-up capital stock or subscribed capital stock of the bank, is it?

A. These that you have been speaking of had been carried up to July 20th in the treasury stock.

Q. They were carried in the treasury stock?

A. Yes, sir.

Q. But there was never any stock issued to them?

A. Never any stock issued to them.

Q. Harry Cribb; 5 shares.

(Testimony of Sidney Stewart.)

A. The same way with him.

Q. S. Hall Young? A. The same way with him.

Q. A. J. Nordale? A. The same way with him.

Q. Barrett & Sickinger? A. The same way.

Q. E. A. Stewart? A. Yes, sir. [336]

Q. How many shares? A. Five shares.

Q. Had he ever paid anything on those shares?

A. Yes, sir.

Q. How much? A. He paid \$500.

Q. And they refunded him the \$500 back?

A. Yes, sir.

Q. On what date was the refund made?

A. July 23, 1908.

Q. S. R. Weiss?

A. No stock ever issued to him.

Q. His name doesn't appear as a stockholder?

A. No, sir. He gave his note for stock, and it was charged to treasury stock on July 28th, and credited—(Interrupted).

Q. No stock ever issued to him?

A. No stock ever issued to him.

Q. Osmond Olson? A. Yes, sir.

Q. How many shares? A. Twenty shares.

Q. Did he ever pay anything on that stock?

A. Yes, sir.

Q. How much? A. \$2,000.

Q. Was that stock afterwards cancelled?

A. That was afterwards cancelled.

Q. On what date? A. August 5, 1908.

Q. A. J. Williams? A. Yes, sir.

Q. Five shares? A. 5 shares. [337]

(Testimony of Sidney Stewart.)

Q. Did he ever pay anything on it?

A. He paid \$500.

Q. That is marked (Reads from paper): "Cancelled 4 day of August, 1908?" A. Yes, sir.

Q. And returned to treasury stock?

A. Yes, sir.

Q. Then this stock that was cancelled was returned into the treasury as treasury stock?

A. Yes, sir.

Q. R. R. Myers.

A. 10 shares, August 8th, cancelled.

Q. Did he ever pay anything on that?

A. Yes, sir. He paid \$250, and that was refunded to him.

Q. That is all he ever paid on it, was \$250?

A. 250.

Q. Of course, the stock was never delivered to him? It was merely made out, and never delivered.

A. The certificate is still attached in the book.

Q. It doesn't bear any indorsements on the back of it? A. No.

Q. D. Courtemanche? A. Yes, sir, 5 shares.

Q. Did he ever pay anything on it?

A. He paid \$500.

Q. Where does it show that he ever paid the money?

A. This note number 2231, and number 2232, made by Dave Courtemanche, for \$125 and \$375, marked paid June 1st.

Q. Were they paid by the cancellation of the stock, or were they paid in money?

(Testimony of Sidney Stewart.)

A. No, they were paid in money.

Q. Were those notes paid? [338]

A. Those notes were paid, yes, sir, both marked "paid."

Q. Both marked paid? A. Yes, sir.

Q. When was that stock cancelled?

A. On the 6th day of August, 1908.

Q. E. M. Keyes is next on the list. How many shares of stock did he have, if any?

A. He gave his notes for stock, and they were cancelled and taken out of the stock afterwards.

Q. When was that done?

A. No stock was issued to him.

Q. No certificate ever issued to him?

A. No, sir.

Q. Does his name appear in the stock-book?

A. No, sir.

Q. He is in the same position as these others?

A. Yes, sir.

Q. The stock always remained in the treasury?

A. Yes, sir.

Q. And never was issued?

A. A certificate never went out.

Q. The stock was never issued. It remained in the treasury all the time.

A. Well, he is not recorded on the stock-book. The stock was outstanding in the treasury stock account on their general statement, but no certificate of stock was given to Mr. Keyes.

Q. There was no certificate ever made out, and his name does not appear as a stockholder on the



(Testimony of Sidney Stewart.)

books of the company?     A. No, sir.

Q. Oscar Goetz?     A. Yes, sir.

Q. How many shares?     A. 10 shares.

Q. Did he ever pay for his stock?     [339]

A. I believe he paid for his stock and the stock was issued to him.

Q. Do you know whether or not Courtemanche was indebted to the bank at the time they cancelled his stock or not?     A. He was, yes, sir.

Q. In what amount?

A. One note I know of for \$200.

Q. And this money that he received from his stock went in payment of that note?

A. \$200 of it, yes, sir.

Q. And do you know whether Oscar Goetz was indebted to the bank at the time his stock was cancelled?

A. No, I don't know, without looking it up.

Q. Can you look it up?

A. There might have been some note held by the bank at that time. That I couldn't tell. But there was no note that was paid with the refund, as appears there.

Q. G. A. Vedine?

A. Vedine is in the same condition as those others.

MR. RIDER.—Q. What condition?

A. That there was no stock issued to him. His name don't appear on the stock-book.

MR. MCGINN.—Q. McDonald. I don't know what his initials are. They are not given here.

A. He is in the same condition as Vedine.

(Testimony of Sidney Stewart.)

Q. Did he ever pay any money to the bank on his subscription?     A. McDonald?

Q. Yes.     A. No, sir.

Q. When was his stock cancelled?

A. October 23d, I think. I can tell that from the stock-book, the treasury stock account in the general ledger. [340]

Q. Do you know whether he owed the bank any money at that time?     A. I do not.

Q. Can you ascertain?

A. It would be pretty hard to tell. While he gave these notes he gave for this stock—(Interrupted).

Q. Outside of that?

A. It would be a pretty hard thing to tell that.

Q. B. E. Johnson?     A. He had 25 shares.

Q. Are you sure of that?

A. B. E. Johnson, 10 shares. "25" was the number of the certificate.

Q. Did he ever pay anything on this stock?

A. Yes, sir. That certificate was paid for, \$1000.

Q. Was the money subsequently refunded to him?

A. It was subsequently refunded.

Q. What date?

A. Under the date of November 19th, I have there.

Q. Was he indebted to the bank at that time?

A. Yes, sir.

Q. In what amount?

A. There was a note made by David Strandberg and Strandberg Brothers, and "J." Johnson.

Q. What was the amount of that note?

(Testimony of Sidney Stewart.)

A. The principal amount in that note was \$15,000.

Q. When was the note executed?

A. November 5, 1908.

Q. And the Strandberg Brothers, and another Strandberg had 110 shares of stock, didn't they?

A. 110 shares, yes, sir.

Q. That stock was paid for, wasn't it, and issued to them? [341]

A. That was paid for.

Q. And a stock certificate issued to them. Do you remember when they paid for it?

A. I don't remember. (Examines some books.) Yes, sir, those certificates were issued.

Q. The stock was paid for in June and July, wasn't it? A. July, I believe, 1908.

Q. And the Johnson stock was also paid for at that time?

A. I presume at the same time. June 3d it was issued.

Q. Strandberg Brothers and Johnson were operating on Ester Creek? A. I don't know.

Q. They borrowed \$15,000 from the bank in November? A. Yes, sir.

Q. And in payment of that note they surrendered up, that is, Johnson surrendered up his 10 shares of stock, and the Strandberg Brothers surrendered up their 100 shares of stock and Emma Strandberg surrendered her 10 shares?

A. No. Emma Strandberg's went to her general credit on deposit.

(Testimony of Sidney Stewart.)

Q. It was the stock of Johnson and Strandberg Brothers that was applied on this note?

A. Of \$11,000, that was applied on this note of \$15,000.

Q. And the balance was paid in cash?

A. The balance of the note, \$4,000.00 was paid in cash.

Q. In other words, the bank accepted this stock as payment upon their obligations, that is, the obligations of Strandberg Brothers?

A. That was towards the payment of that \$15,000 note.

Q. Was Emma Strandberg indebted to the bank at that time?     A. I don't know.

Q. Is there any means of telling?

A. There was no note paid when her stock was cancelled or [342] refunded. That was placed to her deposit account, \$1000.

Q. Next we have, John Clifford.

A. John Clifford, 2 shares.

Q. Did he pay for it?     A. Yes, sir.

Q. And it was afterwards cancelled?

A. That was afterwards cancelled, February 9, 1909.

Q. Did he owe anything to the bank at that time, do you know?

A. I don't know. There was no note paid at that time.

Q. How was this money refunded; paid to Clifford, placed to his account, or what?

A. No, I don't know that he had a deposit ac-

(Testimony of Sidney Stewart.)

count. I can't find any credit on the deposit, or any credit of any loans. Unless there is some credit of his account—A credit was given to him in some manner, because there is a debit to treasury stock.

Q. George Jestel? A. 5 shares.

Q. Did he pay for it? A. Yes, sir.

Q. The stock was subsequently cancelled, was it?

A. Cancelled and returned February 19, 1909.

Q. These certificates that you have here, all show that they were cancelled by B. R. Dusenbury, either as cashier or secretary?

A. Well, I have noticed his name on a great many of them.

Q. Have you found the name of anybody else on them?

A. Here is one: "J. A. Jackson, Secretary."

Q. That was cancelled by the issue of number so and so. Other stock was issued for that. But I mean these: Here is one by Dusenbury, Secretary.

A. By Dusenbury, Secretary. [343]

Q. And this next one, "redeemed," isn't it?

A. That is the one we were just talking about.

Q. What does that show?

A. Redeemed and cancelled February 9, 1909. B. R. Dusenbury, Secretary.

Q. And this one, Osmond Olson reads: cancelled by refund to J. A. Jesson, per instructions from Osmond Olson. That is also signed by Dusenbury as secretary. A. Yes, sir.

Q. And this certificate, W. G. Cassels, cancelled July 16, 1908, by Dusenbury, Secretary. George Jes-



(Testimony of Sidney Stewart.)

tel; that was cancelled when?

A. February 19, 1909.

Q. Cancelled and retired, B. R. Dusenbury, Cashier. Now, do you know whether or not Jestel was indebted to the bank at that time or not?

A. I don't know, without looking—It is almost impossible—at the list of loans.

Q. Have you any memorandum of what became of this money?

A. Yes, sir, it was placed to his deposit account.

Q. His name appears in this bad debt account, doesn't it? A. No, sir.

Q. Now, the next is Hart & McConnell, 10 shares?

A. Hart McConnell, 10 shares.

Q. When was that cancelled by Dusenbury?

A. June 10, 1909.

Q. June 10, 1909, Dusenbury, Cashier. Do you know whether he was indebted to the bank at that time or not, I mean Hart & McConnell?

A. I do not.

Q. Do you know what disposition was made of the money? [344]

A. It was deposited to their deposit account.

Q. How much was deposited to them?

A. \$1,000.

Q. Louis Enstrom?

Q. Was any stock issued to Louis Enstrom and Oscar Enstrom? A. Yes, sir.

Q. How many shares each?

A. 5 shares was issued to Louis Enstrom and 5 shares to Oscar Enstrom.

(Testimony of Sidney Stewart.)

Q. What stock was surrendered up, on what day?

A. The certificate is marked August 24, 909.

Q. It is marked: "Cancelled. Dusenbury, Secretary." A. Yes, sir.

Mr. HEILIG.—Q. You mean the certificate was marked: "Cancelled August 24, 1909"?

A. Yes, sir.

Q. Which one is that?

Mr. McGINN.—That is Louis. How about Oscar?

A. The same date marked "Cancelled. Dusenbury, Secretary."

Q. Do you know whether or not they were indebted to the Fairbanks Banking Company at that time? A. No. I do not.

Q. Do you know what disposition was made of the money, if any was paid them for their stock?

A. There is a credit August 24, 1909, to Enstrom Brothers, \$1000 account 10 shares. [345]

Q. H. B. Parkin.

A. Certificate for 5 shares, dated May 1, 1908. Certificate for 5 shares, dated September 14, 1908.

Q. Making in all 10 shares? A. 10 shares.

Q. When does it appear from the certificate that that stock was returned to the treasury?

A. This is marked: "Cancelled October 28, 1909, J. A. Jackson, Secretary." That is certificate number 17.

Q. Of date?

A. Of date May 1, 1908. The one dated September 14th, certificate number 71 for 5 shares; "Cancelled October 28, 1909, J. A. Jackson, Secretary."

(Testimony of Sidney Stewart.)

Q. Now, I believe that you testified in your direct examination that that money was paid D. Michie per Parkin, or something of that kind. Do you know whether or not that money was paid to H. B. Parkin for that stock? It is: "D. Michie on account of Parkin stock," isn't it?

A. It appears that under date of October 28, 1909, when these two certificates were cancelled, that a note, date May 27, 1909, number 2921,—a memorandum note it was,—made by D. Michie for \$1000, was cancelled.

Q. You say that it was made by D. Michie. The memorandum of the note wouldn't have been made by him?

A. The memorandum note, no, sir. The memorandum note would not have been made by him. I am taking it from the register, under "maker of note" "D. Michie," and over to the right a notation "memorandum." That had been made by some officer of the bank, presumably by some officer of the bank.

Q. What does this mean here (Indicating).

A. This is a memorandum on the charge to treasury stock. It [346] states: "Stock notes credited B. R." (bills receivable). Here is a credit to bills receivable, Note 2921, \$1000. Memorandum.

Mr. McGINN.—"Stock notes charged bank." We would like to read this in evidence.

Mr. RIDER.—All right.

Mr. McGINN.—(Reads): "October 28, 1909, debit treasury stock"—

(Testimony of Sidney Stewart.)

The COURT.—What is that piece of paper?

Mr. McGINN.—The debit ticket (Reads): “D. Michie, account Parkin stock, \$1000; Aleck Cameron, \$100; Edith McCormick \$200; J. W. McCormick, \$200. Total \$1500. Stock notes credited B. R.” Signed “J.” And the credit is: “October 28, 1909, credit B. R. number 2922 Michie \$1000; #2225, Aleck Cameron \$100; 2221, Edith McCormick, \$50; 2222 Edith McCormick, \$150; 2223, J. W. McCormick, \$50, 2224, J. W. McCormick \$150. Total \$1500. Stock notes charged back.” I will ask you to state whether or not Aleck Cameron ever paid for his stock, and whether there was ever any stock issued to him.

A. The stock ledger, page 80, shows Aleck Cameron under date of August 20, 1909, transfer 4, certificate number 80, 1 share. On the other side; October 28, 1909, certificate number 80 is charged. The certificate of stock is dated August 20, 1909, for one share, and it appears never to have left the stock-book.

Q. Never to have been signed?

A. It is not signed by the president. It is signed by B. R. Dusenbury, Secretary.

Q. Can you state whether or not he ever paid for that share of stock?

A. No, sir. I am satisfied he did not, because the note that was originally given is this same number 2225 which is credited here at the time it was charged back. [347]

Q. They just charged off the note and took back

(Testimony of Sidney Stewart.)

the stock.      A. Yes, sir.

Q. Then Edith McCormick and J. W. McCormick.

A. The same thing in regard to the McCormicks as with the Cameron.

Q. J. W. McCormick was indebted to the bank at that time besides that note for his stock?

A. I am sure I don't know.

Q. Could you refer to this list and tell us—the list of notes that you say the receiver now has in his possession? (Handing same to witness.)

A. That note is number 3,635, which is dated October 6, 1910. That was not given until October 6, 1910. (Indicating on list.)

Q. You don't know whether or not at that time he was indebted to the bank?

Mr. RIDER.—At what time?

Mr. McGINN.—At the time the stock was cancelled.

A. No, I do not know.

Q. Francis H. Taylor.

A. A stock note of Francis H. Taylor was cancelled the same as the McCormick note, and the same follows with reference to the stock.

Q. Who was that taken by?

A. Cancelled by J. A. Jackson, Secretary, November 11, 1909.

Q. Both the McCormick certificates and the Cameron certificate were cancelled by Jackson, as appears upon the face of the certificates.      A. Yes, sir.

Q. McGowan & Clark, \$500.

A. The same would apply to McGowan & Clark as



(Testimony of Sidney Stewart.)

applies to McCormick. [348]

Q. Horton & Dunham.

A. The stock ledger shows that June 26, 1908, there was issued to them certificate number 34 for 5 shares, which, on January 18, 1910, was returned to treasury stock, returned to the bank and cancelled. They had paid their original stock subscription notes, and paid for their stock, and took their stock certificate, and, when it was returned, the \$500 was credited to their deposit account.

Q. Do you know whether or not they were indebted to the bank at the time or not? A. No, I do not.

Q. Can you tell from any records that you have?

A. There was, I believe, two notes in the receiver's hands at one time, which were afterwards paid, but I don't recall the numbers. If I knew the numbers of those notes, I could trace them and see what the dates were.

Q. How many of these stock certificate notes, where you say the stock has been cancelled, has the receiver in his possession and which have never been surrendered up to the parties whose stock was cancelled?

A. Stock certificate notes that were cancelled?

Q. Not the notes that were cancelled. But how many notes have you in your possession—how many stock subscription notes have you still in your possession? A. Unpaid?

Q. Yes. Those are the only ones you would have, would be the unpaid ones.

A. You mean of the original, first notes. There is John Collins.

(Testimony of Sidney Stewart.)

Q. Have you still the note of J. W. McCormick in your possession?

A. I believe the cancelled note. [349]

Q. It is cancelled, is it?

A. I believe I have that note here.

Q. And Edith McCormick.

A. Yes, sir. (Hands same to McGinn.)

Q. Were these renewal notes that were given for the stock?

A. No, they have the original number on them.

Q. They are all marked "paid," are they not?

A. Yes, sir.

Q. All of those notes that were taken for the stock—for which the stock was cancelled, are all marked "paid," are they?

A. They are marked "paid" on the loans and discount register here, which shows that the note was paid, was cancelled, and the stock cancelled.

Q. They are stamped "paid" upon the face, are they not?

A. All that I have; all that I know of.

Q. Were those stock notes included in any of the lists of bad debts, or of debts that were then due and unpaid, which you testified the other day were still in the hands of the receiver?

Mr. RIDER.—Which stock notes are you asking about now; the ones that are cancelled?

Mr. MCGINN.—Yes, that are cancelled.

A. The ones that have been cancelled?

Q. Yes. A. No, sir.

Q. They were not included in any of those totals

(Testimony of Sidney Stewart.)

that you gave us the other day.

A. A cancelled note was not included, no, sir.

Q. I asked you the other day to figure up, if you could, or to give me the figures, on the amount of interest that had been paid upon these stock notes. Can you tell me that?     A. \$8,796, approximately.

Q. Were you able to figure out the amount that had been paid [350] upon these various notes that you spoke of here the other day upon which you said no interest had been paid and upon which the partnership received interest, and which you figured up to be about \$7,500 worth of interest?

A. I had in mind at that time that, in order to do that, I would have to go through the account of the Sundries Old Bank kept on the general ledger of the corporation, but I believe the payments which we made on those notes should be shown on the partnership book credited to the doubtful account.

Q. There were only three notes in the doubtful account that were taken over by the partnership, the notes of three persons. What I want to get at is this: There was credited to the partnership on the 23d day of March, 1908, the sum of \$35,500 and some odd dollars, or whatever it is—     A. Yes, sir.

Q. You testified that, on the notes turned over, interest had only been paid to the extent of some \$32,000, and that there was about \$7,500 of interest that was paid the partnership which had never been collected. Now, what I want to show is the amount of payments which were made upon these notes upon which you say no interest had been paid. Could you

(Testimony of Sidney Stewart.)

approximate it? In other words, if the payments that had been made upon those notes had been applied upon the interest account instead of upon the principal of the note, would it have been sufficient to have made that sum of \$7,500?

A. I understand you now. I will have to think about that a minute. Well, it would be just a guess. I have no doubt that there was principal enough paid on the notes that were turned over, on which this \$39,000 interest was figured—there [351] was enough of principal paid, which was applied on principal, which, if it had been applied on the payment of interest, would have paid the full \$39,000.

Q. Now, I wish you would refer to the daily balance of April 16, 1910, of the Fairbanks Banking Company. A. (Opens book.) Yes, sir.

Q. That was four days after the declaration of the dividend, was it not?

A. The dividend was declared on the 12th or 13th, I don't remember which.

Q. What was done with that dividend?

A. That was declared by the Fairbanks Banking Company?

Q. Yes. A. Paid to the stockholders.

Q. When were the first payments made, can you tell?

A. Under date of April 13th the dividend account is credited with \$33,720.

Q. That was the amount of the dividend?

A. That was the amount of the dividend. From this statement, there were no payments made until

(Testimony of Sidney Stewart.)

April 15th. On April 15th the balance is \$21,720.

Q. Now, to refer again to April 16th, can you tell me what the daily balance shows was the net profits of the Fairbanks Banking Company then?

(Witness examines book and does some figuring with a pencil.)

Q. What does the interest account show?

A. There is a credit of \$12,969.98.

Q. And the interest due from banks?

A. Interest account banks, \$265.50.

Q. That is interest on bank balances?

A. That is earnings of interest, account of bank balances. [352]

Q. Then your exchange?

A. Exchange is \$988.45.

Q. Safe deposit? A. \$567.50.

Q. Rents? A. \$1,165.

Q. Dust exchange? A. \$508.33.

Q. Profit and loss? A. \$1,000.

Q. Warehouse? A. \$290.50.

Q. Undivided profits? A. \$1,254.75.

Q. Making a total of? A. \$19,010.44.

Q. Referring to expense and bad debt accounts; what does the bad debt account show on that date?

A. \$43.62.

Q. Expense? A. \$13,764.04.

Q. Interest, savings? A. \$658.43.

Q. And that amounts to how much?

A. \$14,466.09.

Q. Subtract that from the \$19,010.44.

A. \$4,544.35.



(Testimony of Sidney Stewart.)

Q. Now, these items I have given include all of the earnings account at that time. A. Yes, sir.

Q. And include all the bad debt and expense accounts. A. Yes, all as shown by the books.

Q. So that would show a net profit upon that date of how much? A. \$4,544.35.

Q. How much of the dividend had been paid out on the 16th day of April? A. \$18,100.

Q. There was still \$15,000 approximately of the dividend money on hand.

A. \$15,620. [353]

Q. According to your testimony the other day, I believe that there was something like \$900 less than the undivided profits account that was declared as a dividend—\$970.18.

A. That was of date April 13th, 1910, that I testified to the other day.

Q. The dividend was declared on the evening of the 12th?

A. That was the date of April 13th when the \$33,720 was credited to dividend account.

Q. Did you figure out the difference there?

A. Yes.

Q. What is it? A. \$959.67.

Q. So, then, on the 16th, it shows that there was a profit of \$4,544.35. That shows that the bank must have collected, between the 13th and the 16th, the sum of \$4,544.35 and this \$959.67, or a total of \$5,504.02. Isn't that correct?

Mr. RIDER.—We object to that question. That does not necessarily follow. If he wants to know

(Testimony of Sidney Stewart.)

what the bank did collect—

Mr. McGINN.—I will do that, but I can't do it all at once.

The COURT.—It is cross-examination.

Mr. McGINN.—Q. Was that correct?

A. It would practically amount to that. Yes, sir.

Q. Where did that money come from, or that profit come from?

A. Well, the balance to the credit of interest earnings on September 13th, \$7,932; while the credit to interest account on the 16th—(interrupted).

Q. What was it on the 12th?

A. \$7,903. Practically no change there. But on the 16th it is increased to the amount of \$12,969.98.

Q. So that it shows that interest had been paid in between the 12th and the 16th amounting to the sum of \$5,000. A. Approximately \$5,000.

Q. Were there any earnings from any other source? [354]

A. No material change; small amounts.

Q. A small amount of earnings?

A. Yes, sir. Two or three dollars.

Q. The interest that was paid was interest that was due and earned on notes of the bank. Isn't that true? A. Yes, sir.

Q. And it was for interest that had been earned prior to April 12, 1910. A. Yes, sir.

Q. I will show you Plaintiff's Exhibits "JJ," "KK" and "LL." What date do they bear?

A. April 12, 1910.

Q. Where were they executed?

(Testimony of Sidney Stewart.)

A. At Fairbanks, Alaska.

Q. And all made out in favor of the Washington Trust Company.     A. Yes, sir.

Q. Each for the sum of \$50,000.     A. Yes, sir.

Q. Signed: Fairbanks Banking Company. By E. T. Barnette.     A. E. T. Barnette, President.

Q. And indorsed by E. T. Barnette.

A. Yes, sir

Q. And all stamped upon the face: "Paid July 20, 1910."     A. Yes, sir.

Q. Now, do the books of the bank show that the Fairbanks Banking Company at any time borrowed from the Washington Trust Company the sum of \$150,000?

A. I believe there is only one entry in their bills payable account of \$200,000. That was the Dexter Horton notes. [355]

Q. Nothing in the books to show that at any time the Fairbanks Banking Company borrowed from the Washington-Trust Company the sum of \$150,000.

A. Not on this ledger, or on these books.

Q. When were these amounts credited to the account of the Fairbanks Banking Company, if ever, by the Washington Trust Company? Have you got the statement of the Washington Trust Company covering that?     A. Yes, sir.

Q. Can you get those?     A. Yes, sir.

(By Mr. RIDER.)

Q. Mr. Stewart, you were inquired of concerning certain indorsements that had been made upon the original stock subscription notes, or the equivalent

(Testimony of Sidney Stewart.)

thereof, which are now in the hands of the receiver, and you testified to certain indorsements that were made thereon respecting the notes of John Collins, C. J. Robinson, D. H. Jonas, O. E. Tackstrom, McMullen Brothers, Ray Brumbaugh and Mr. Claypool. Have you those notes with you? [356]

A. Yes, sir.

Q. The John Collins note first. What is the indorsement on that note of April 15th or 16th, or is there any indorsement of that date?

A. April 15, 1910. Interest paid to 4/15/10, \$37.50. April 15/10. Paid on account \$2.50.

Q. Will you look at the books and see what those credits consist of? A. That was dividend.

Q. Do you know that without looking at the books? Mr. McGINN.—What was the amount?

A. \$40.

Q. You say you know that was from the dividend?

A. Yes.

Mr. RIDER.—Q. Were those indorsements made by applying the dividend of Collins?

A. By applying the dividend of Collins on his note.

Mr. McGINN.—If he knows, I am satisfied. I think that is the case myself.

Mr. RIDER.—Q. Are you able to state that that is a fact? Or do you (to Mr. McGinn) concede it to be a fact. You say: If he knows, you admit it.

The COURT.—I understood him to say so.

WITNESS.—Yes.

Mr. RIDER.—Q. That is what that arose out of.

A. That arose out of the dividend.

(Testimony of Sidney Stewart.)

Q. Take the C. J. Robinson credit.

A. April 15, 1910. Paid on account \$149. April 15, 1910. Interest paid to date, \$651. [357]

Q. What did those credits arise out of?

A. That was also out of dividend.

Q. Did the dividend make up the entire amount of those credits on the Robinson note?

A. Yes, sir. Those two credits on the note amount to \$800, which was the amount of the Robinson dividend.

Q. Now, the D. H. Jonas note.

A. April 15, 1910, paid on account \$175.29. April 15, 1910, interest paid to date \$824.71.

Q. What did those two credits arise out of?

A. Out of the dividend.

Q. Both those credits were the application of the dividend? A. Yes, sir.

Q. O. H. Tackstrom.

A. April 15, 1910, paid on account \$19.38. April 15, 1910 interest paid to date \$80.62.

Q. What did those two credits arise out of?

A. The dividend to O. E. Tackstrom.

Q. His dividend was applied to make those two credits. A. To make those two credits.

Q. Now, McMullen brothers.

A. April 15, 1910, on account interest \$200.

Q. What did that arise out of?

A. That was the dividend to M. H. McMullen.

Q. Ray Brumbaugh.

A. April 15, 1910, paid on account \$331.17. April 15, 1910, interest to 4.15.10 \$1668.83.



(Testimony of Sidney Stewart.)

Q. What did those credits arise out of?

A. Those two indorsements are the amount of the dividend to Ray Brumbaugh.

Q. And the Claypool note? [358]

A. April 5, 1910. Indorsement on account of interest \$1000.

Q. What did that arise out of?

A. The dividend to Charles E. Claypool.

Q. When you stated, in answer to a question this morning from Mr. McGinn, that the increase in the interest item as shown on their books between April 12th and April 16th arise out of interest that had been paid on notes in the hands of the bank at that time and which had accrued prior to April 12, 1910, do you know whether or not these payments which you have read as being applications of the dividend go to make up that amount of interest standing on the books on April 16, 1910?

A. Well, I have not looked up the credit entries on the books, but the indorsements here of April 15th as shown on these notes undoubtedly include the amount of those dividends.

Q. Will you please figure the amount of those interest indorsements on those notes by the application of the dividend; what the total of it is?

A. The total would amount to \$4,462.66.

Q. What was the total interest item carried on the books of the partnership on April 13, 1910?

A. The credit to interest is \$7,932.74.

Q. What is the credit to interest on April 16, 1910?

A. \$12,969.98.

(Testimony of Sidney Stewart.)

Q. What is the difference between those two items? A. \$5,037.24.

Q. And of that \$5,000, \$4,462.62 are credits of interest upon the stock notes by way of application of the dividend. A. Yes, sir.

Q. Do the books give you information by which you can determine whether or not this item of \$12,969.98 credited to interest [359] account is interest collected to April 16, 1910, or merely a computation of accrued interest to that date?

A. This amount of \$12,969.98?

Q. Yes. Can you tell whether that is interest that has been collected, or whether it is merely a computation of accrued interest to that date on the loans.

A. That is interest paid.

Q. Either by application of dividends, or in some other manner? A. Yes. That is money received.

Q. Now, please turn to the daily statement of August 29, 1908, respecting which you testified yesterday. A. Yes, sir.

Mr. RIDER.—I wish to read from copy book 1. There are two books marked “1”—from March 16, 1908 to July 10, 1908, marked on the back: “Fairbanks Banking Company telegrams.” I wish to read a telegram copied therein to Kerr & McCord, sent by E. T. Barnette, found on page 175, of date August 20, 1908.

Mr. McGINN.—We object to it. It seems to be a private telegram between E. T. Barnette and his attorneys Kerr & McCord. I don't know that it is binding upon these defendants.

(Testimony of Sidney Stewart.)

Mr. Rider.—*I* leads down to other matters (Reads):

“We will settle for cash \$50,000, and three notes \$25,000 each due July 15th, August 15th and September 15th next year. Earlier dates will hamper on account bank cannot ship gold bullion earlier in the season. Bank will guarantee notes in preference my giving mortgage, as mortgage might seriously injure business bank. When settlement offered is accepted have the Gold Bar stock transferred to Fairbanks Banking Company from me and deposit for their account with Dexter-Horton. Keep us well pested in regard to. E. T. Barnette.”

Addressed to Kerr & McCord, Mutual Life Building, Seattle, [360] Washington. Dated, Fairbanks, Alaska, August 20, 1908.

Mr. McGINN.—What is the purpose.

Mr. RIDER.—I am going to show what the board did with that wonderful amount of money they had on August 29th.

Mr. McGINN.—Here is a suit between E. T. Barnette and a man named Causten. Barnette wires out that he will settle with them for a certain amount of money. That has nothing to do with this case. Here is a communication between Barnette and his attorneys, and how are these defendants to be bound by that in any way?

Mr. RIDER.—I expect to show that by the minutes of the board of directors' meeting.

The COURT.—It may stand for the present, until I can tell.

(Testimony of Sidney Stewart.)

Mr. RIDER.—I want to read from page 192, a telegram from E. T. Barnette to E. S. McCord, dated September 2, 1908, in the same copybook (Reads):

“Fairbanks, Alaska, September 2, 1908. E. S. McCord, Mutual Life Building, Seattle, Washington. Have settled Caustens \$75,000 cash, \$25,000 January 1st, \$25,000 July 1st. Papers mailed. See Dexter. Telegraph as soon as you have closed.”

Mr. McGINN.—I make the same objection, and move that it be stricken out.

The COURT.—The same ruling.

Mr. RIDER.—Next, I want to read a telegram from the Fairbanks Banking Company, found in the same copy book, page 193, dated Fairbanks, Alaska, September 2, 1908 (Reads):

“Dexter-Horton & Company. Seattle, Washington. Upon receipt of certificates of stock Gold Bar Lumber Company covering 96 shares in our name, charge out account and pay E. S. McCord \$75,000 for account of Barnette.” Signed: “Fairbanks Banking Company.” [361]

Mr. McGINN.—We make the same objection.

The COURT.—The same ruling.

Mr. RIDER.—I wish to read from the minutes of the executive committee of the Fairbanks Banking Company held September 2, 1908.

Mr. HEILIG.—Is this in evidence?

Mr. RIDER.—I am putting it in evidence now.

Mr. HEILIG.—As an exhibit?

(Testimony of Sidney Stewart.)

Mr. RIDER.—I will read it into the record (Reads):

“Minutes of executive committee of Fairbanks Banking Company Fairbanks, Alaska, September 2, 1908. A special meeting of the executive committee of the Fairbanks Banking Company was held at 3–30 P. M. at the office of the corporation. E. T. Barnette, president, presiding. B. R. Dusenbury, Secretary, present. Members present; Jonas, Barnette, Dusenbury, Stark, Hill. Captain Barnette explained to the committee that in the adjustment of the Caustens matter it was required to give the bank’s C-D (certificates of deposit) for \$25,000 due January 1st, 1909, and \$25,000 due July 1, 1909 respectively, and that he and his wife would indorse each of the certificates. It was moved by Jonas, seconded by Hill that the certificates of deposit for \$25,000 each be issued. Motion carried. Captain Barnette gave his notes to the bank for the amounts due on the respective dates.”

Then I wish to read from the minutes of the board of directors of the Fairbanks Banking Company held on September 12, 1908, the following (Reads):

“Minutes of meeting of the board of directors of the Fairbanks Banking Company. Fairbanks Alaska, September 12, 1908. The regular monthly meeting of the board of [362] directors of the Fairbanks Banking Company held at the office of the corporation at Fairbanks, Alaska at 3–30 P. M. E. T. Barnette, presiding. B. R. Dusenbury, secretary, present. Members present; Jonas, Flygar,



(Testimony of Sidney Stewart.)

Barnette, Jesson, Yarnell, Ryan, Robinson, Stark. James W. Hill, Vice-president, and John L. McGinn, attorney for the bank, were also present. The minutes of the meeting of the executive committee held on the following dates were read, and on motion passed and duly seconded, were approved, ratified and passed as the action of the board." Listing, among others, September 2."

Q. Now, Mr. Stewart, will you examine the account of E. T. Barnette, or turn to the account of E. T. Barnette on the books of the Fairbanks Banking Company during the months of August and September, 1908.

A. This ledger starts on the 1st of September that I have here, and the August account is in another ledger.

Q. What entries of debit do you find on September 2, 1908?

Mr. McGINN.—We make the same objection to all of this testimony.

The COURT.—Overruled.

Mr. RIDER.—Q. What was the condition of his account on that date.

A. Under date of September 2, 1908, in the deposit ledger of the Fairbanks Banking Company the account of E. T. Barnette is charged \$75,000.

Q. After that charge of \$75,000 had been made to E. T. Barnette's account, what condition does it leave his account in?

A. His account appears as an overdraft of \$16,521.36.

(Testimony of Sidney Stewart.)

Q. Can you find the corresponding credit for that \$75,000? When his account was charged with \$75,000 what credit was made?

A. In the general ledger, the account of Dexter-Horton & Company [363] Seattle, under date of September 2, 1908 is credited \$75,000. Notation in the ledger "T Barnette." It means telegraphic transfer.

Q. The word "Barnette" appears there?

A. Yes, sir.

Q. In the minutes of the executive committee from which I read there is reference to two certificates of deposit, each in the sum of \$25,000, and also about the taking of the notes of Mr. Barnette and his wife. What record do you find of them?

A. In the loans and discount register, under date of September 2, 1908, note number 2443, recorded as maker E. T. Barnette in amount of \$25,000 due January 1, 1909, marked "paid 1/2/09"; Note number 2444, same date, E. T. Barnette, \$25,000, due July 1, 1909. \$25,000 paid 3/25/09. And in the certificate of deposit ledger, under date of September 2, 1908, certificate of deposit number 589 for \$25,000, and 590 for \$25,000; both issued in the name of E. T. Barnette; marked "due January 1, 1909" on the first one, and the second one marked "due July 1, 1909." The first one is marked "paid 1/2/09," and the second one marked "paid 3/23/09."

Q. That is certificates of deposit. A. Yes, sir.

Mr. RIDER.—Now, I want to read from the same letter copybook, being copybook i of telegrams from

(Testimony of Sidney Stewart.)

March 16, 1908 to July 1, 1909, from page 167 (Reads):

“Telegram. Fairbanks, Alaska, August 14, 1908. Messrs Kerr & McCord, Mutual Life Building, Seattle, Washington. Refer to your telegram of 5th, refer to your telegram of 13th regard my financial condition. Capital stock old bank \$200,000 due me is on deposit with new bank payable in one year after release has been executed Gold Bar stock without interest. If you can settle case, endeavor to make [363 $\frac{1}{2}$ ] cash payment as small as possible, balance on time. It is imperative you release Gold Bar. New bank will require it to procure credit within thirty days.”

From the same copy book, page 184, a telegram dated Fairbanks, Alaska, August 27, 1908 (Reads): I will read this portion:

“Dexter Horton & Company, Seattle Washington. Sir:—We own four-fifths entire stock Gold Bar Lumber Company. Expect to get release in the near future. What amount of credit can you extend us on same for the winter when it has been deposited with you, having in mind release Caustens now in hands of Griffin trustee.”

Mr. McGINN.—At this time I move that all the testimony that has been given relating to the Caustens—Barnette suit, and the communications between Barnette and his attorneys Kerr & McCord, and the action of the bank in loaning Barnette \$50,000, which is shown here to have been paid, be stricken out for the reason that it is irrelevant, in-

(Testimony of Sidney Stewart.)

competent and immaterial, not pertinent to the issues in this case.

The COURT.—Motion denied, with leave to renew it.

Mr. CLARK.—We note an exception.

Mr. RIDER.—There is one telegram that I have not with me, but I have a copy of it. It is of date September 5, 1908.

Mr. McGINN.—No objection on the ground that it is not the original. You may read from the copy that you have.

Mr. RIDER.—Then I will read into the record the telegram from Dexter Horton & Company to the Fairbanks Banking Company, of September 5, 1908 (Reads):

“In reply to your telegram of 4th cannot advance on Gold Bar stock; will only advance against shipment of bullion. We are without advices about sending by express company [364] any additional shipments. If satisfied, will advance McCord payment.

The COURT.—I do not understand what you contend the effect of that evidence would have on the financial condition of the bank.

The COURT.—I think it may stand for the present. I do not see that it throws very much light on the solvency or insolvency of the bank at that time. But it may stand in explanation of where the funds of the bank were invested at that time.

Mr. McGINN.—We except.

Mr. RIDER.—Q. Mr. Stewart, I call your atten-

(Testimony of Sidney Stewart.)

tion to Plaintiff's Exhibit "MM," being the list of notes which was prepared by you as stated by you in your testimony the other day, and which notes are now in the hands of the receiver. I call your attention to the columns of figures in the center of the page between the name of the note and the amount of the note, and ask you what those two columns are; what they are intended for.

Mr. McGINN.—We object as immaterial, and not redirect. They show for themselves. It is when made and when due. He can mark them on the exhibit.

Mr. RIDER.—Mark the head of the first column: "date," and the head of the second column; "Maturity." (Exhibit "MM" so marked.)

Mr. RIDER.—It is admitted that, as provided by section 1 of Article 3 of the By-laws of the Fairbanks Banking Company, the executive committee of the company was composed of the president, first vice-president and three directors; that on April 13, 1908, said section of the By-laws was amended so [365] as to make the executive committee consist of the president, first vice-president, cashier and three directors.

Mr. McGINN.—Yes.

Mr. RIDER.—I wish to read from the minutes of an adjourned meeting of the board of directors of the Fairbanks Banking Company held on April 13, 1908, as follows (Reads):

"It was moved by Jonas, seconded by Robinson, that the president present a written report of the



(Testimony of Sidney Stewart.)

condition of the bank at each monthly session of the board of directors. Motion carried."

Mr. RIDER.—Now, gentlemen, I have checked through these reports to see whether or not that was complied with enough to become a recognized custom of the bank, to present that report. Do you make any controversy about the report being presented?

Mr. MCGINN.—We admit that there were monthly reports made to the board.

Mr. CLARK.—Monthly statements, showing the condition of the bank.

Mr. RIDER.—At each monthly meeting there was a monthly statement made by the president?

Mr. MCGINN.—That there was a written statement.

Mr. RIDER.—That there were written reports made, showing the condition of the bank, according to that resolution.

For the purpose of showing the duties and powers of the executive committee, I wish to read from Article 3 of the By-laws. [366]

Mr. RIDER.—Reading from Section 2 of Article 3 of the By-laws of the Fairbanks Banking Company, entitled "Duties of Executive Committee." (Reads):

"It shall be the duty of the executive committee to pass upon the loans and securities therefor. To advise the president in the matter of the conduct of the business of the corporation. Such committee shall have entire control and supervision of all the property and business affairs of the corporation,

(Testimony of Sidney Stewart.)

and shall have and exercise all the powers and privileges which are possessed by the board of directors.”

And Section 4, which I take is a limitation upon the broad [367] powers of Section 2 (Reads):

“All actions of the executive committee shall be reported to the board of directors at its meeting next ensuing and such action shall be subject to revision or alteration by the board, provided that no rights of third parties shall be affected by any such revision or alteration.”

Q. Mr. Stewart, will you turn to the books of the Fairbanks Banking Company showing the date when the capital stock of the First National Bank came into the Fairbanks Banking Company? This is a matter we left to subsequent agreement, but we seem unable to agree.

Mr. McGINN.—Let’s see if we can agree now.

Mr. RIDER.—See if I can state it: In the month of May, 1909, the Washington-Alaska Bank of Washington and the Fairbanks Banking Company became the owners each of one-half of the capital stock of the First National Bank of Fairbanks, and carried the same on their books in the sum of \$62,500 each. They continued each to own this stock until the 13th of September, 1909, when the Fairbanks Banking Company purchased the entire capital stock of the Washington-Alaska Bank of Washington. Thereafter the stock remained the property of the two banks in the amounts above stated until the 4th day of May, 1910, when the entire stock was sold by the Fairbanks Banking Company to R. C. Wood and

(Testimony of Sidney Stewart.)

John L. McGinn, for the sum of \$125,000; that this sum of \$125,000 was paid to the Fairbanks Banking Company by the said McGinn & Wood either by drawing their checks upon credits which they had with the Fairbanks Banking Company, and the remainder, amounting [368] to \$61,000 in cash, being paid to the Fairbanks Banking Company. The Fairbanks Banking Company then—Was it a charge or a credit, Mr. Stewart? A. Which?

Q. How they applied it on the Washington-Alaska Bank certificate of deposit?

A. The Fairbanks Banking Company issued a certificate of deposit for \$62,500.

Mr. RIDER.—(Continuing.) —issued a certificate of deposit to the Washington-Alaska Bank in the sum of \$62,500 for the portion of the stock belonging to the Washington-Alaska Bank of Washington. That neither of said banks received any dividend upon said stock, not any interest upon the amount invested therein. That is correct, is it not?

Mr. McGINN.—I am willing to admit that it is correct, except each of the banks carried stock to the value of \$62,500, for you know there was some stock outstanding. But I suppose that was qualifying stock. The admission may tend in a measure to contradict some of the other testimony that has been introduced showing the stock that they carried. For this purpose, I don't think that it makes any difference.

Mr. RIDER.—There were a few outstanding

(Testimony of Sidney Stewart.)

shares. When they got in the \$62,500 that was the full amount.

Mr. McGINN.—That bought up all the stock. I am willing, with that understanding, that it may stand.

The COURT.—It may be considered as an admission, then.

Mr. RIDER.—Q. Mr. Stewart, turn to your books showing the book entries that were made by the Fairbanks Banking Company on receiving from the Washington-Alaska Bank of Washington the dividend in the sum of \$50,000 which was declared by that [369] bank on its capital stock.

Mr. CLARK.—We object as not redirect examination, incompetent, irrelevant and immaterial.

The COURT.—He may answer. (Defendants except.)

Mr. McGINN.—We may be able to agree on that.

Mr. RIDER.—It is a matter of book entry.

Mr. McGINN.—There was \$25,000 of it placed to the undivided profit account of the Fairbanks Banking Company, and \$25,000 of it applied in reduction of what the Fairbanks Banking Company was carrying the stock of the Washington-Alaska Bank at.

Mr. RIDER.—That is all right as to that side of the ledger. Now, on the other side, as to what corresponding charge was made in order to offset those two entries amounting to \$50,000. That is what I want to show.

Q. Give us those entries with regard to that matter, Mr. Stewart.

(Testimony of Sidney Stewart.)

Mr. McGINN.—Is this the book of the Washington-Alaska Bank?

Mr. RIDER.—No. Of the Fairbanks Banking Company.

A. I have not the ledger here of that. I should have the Savings Ledger of the Fairbanks Banking Company here to show that outstanding account.

On April 13, 1910, the Washington-Alaska Bank were carrying F. B. Co.'s C Ds \$125,000. On April 14th they credit \$50,000 reducing certificates of deposit of F. B. Co. to \$75,000. On that same day the balance of the dividend account is reduced \$49,666.68, which was in payment of the dividend, which was paid in that way, by giving the Fairbanks Banking Company credit. Now, the Fairbanks Banking Company carried their certificates, or part of them, I believe, with their savings deposits, and their deposits on the 13th were \$502,858.92, and on the 14th \$452,921.42. I think that change in those balances is the same amount that was received from the [370] Washington-Alaska Bank, but I have not the details of it in any book here. The payment by the Washington-Alaska Bank to the Fairbanks Banking Company was made by indorsement on the certificate of deposit, or whatever it was, that the Washington-Alaska Bank held.

Mr. RIDER.—Any controversy about that transaction?

Mr. McGINN.—No. It seems to me that the manner in which they kept the books doesn't make much



(Testimony of Sidney Stewart.)

difference; it is the transaction itself.

Mr. RIDER.—That is all you can give from the books you have here?     A. Yes.

Q. Now, I want to read concerning the Jestel stock, the following as appears from the minutes (Reads):

“Minutes of the meeting of the board of directors of the [371] Fairbanks Banking Company held at Fairbanks, Alaska, February 13, 1909.

A meeting of the board of directors of the Fairbanks Banking Company was held at 8 P. M. at the office of the corporation, Fairbanks, Alaska.

James W. Hill, Vice-President, presiding. B. R. Dusenbury, Secretary, present. Members present: Robinson, Jesson, Ryan, Hill, Peoples and Jonas.

The matter of the Jestel stock was brought up for consideration and it was the sense of the meeting that it disposition be left to the officers of the bank.”

Now, reading from the minutes of the meeting of the board of directors of the Fairbanks Banking Company, Fairbanks, Alaska, March 12, 1909 (Reads):

“The regular monthly meeting of the board of directors of the Fairbanks Banking Company was held at the office of the corporation at Fairbanks, Alaska, at 9 o'clock P. M. E. T. Barnette, President, presiding. B. R. Dusenbury, Secretary, present. Members present; J. A. Jesson, E. T. Barnette, D. H. Jonas, D. Ryan, Dave Yarnell, C. J. Robinson, John Flygar; L. N. Jesson, Second Vice-president, and John L. McGinn, attorney for the bank, were also present. The minutes of the board meeting of Feb-

(Testimony of Sidney Stewart.)

ruary 13, were read and approved as read.”

Q. Mr. Stewart, I don't recall whether, in answer to Mr. McGinn this morning, you testified respecting the Jestel stock, as to whether the certificate was cancelled or not. Will you look at the stock-book and see what was done with reference to that stock?  
[372]

Mr. CLARK.—He testified that it was refunded and the money placed to his credit.

Mr. RIDER.—All right.

Q. Mr. Stewart, you are acquainted with James W. Hill, a defendant in this action? A. Yes, sir.

Q. Are you acquainted with his handwriting?

A. Yes, sir.

Q. I call your attention to exhibit “F 16.” I want to prove that Mr. Hill signed that letter, which is signed “Jim.”

Mr. McGINN.—I will ask him (Confers with Jas. W. Hill).

Mr. McGINN.—Yes.

Mr. RIDER.—I wish to read from letter-book 7, being from date of January 29, 1910, to June 2, 1910, page 253 (Reads):

“April 13, 1910. Washington Trust Company, Seattle Washington. Gentlemen: Enclosed please find resolution as adopted by the board of directors of the Fairbanks Banking Company at their regular monthly meeting held on the 12th day of April, 1910, at 8:30 P. M., together with resolution authorizing E. T. Barnette, President, to borrow up to the amount of \$250,000, signed and sealed as requested;

(Testimony of Sidney Stewart.)

also five notes for \$50,000 each, signed by the Fairbanks Banking Company, By E. T. Barnette, President, and also indorsed by Mr. Barnette, President, and also indorsed by Mr. Barnette individually. We trust you will find these forms filled correctly, and on receipt of same kindly wire us your acceptance."

(Signed) "J. A. JACKSON, Cashier."

Q. Have you examined the reconciliation statement of the Washington Trust Company of Seattle, for the purpose of determining whether or not those notes appear in that statement?

A. I looked those over some time ago, and for a few minutes this noon, but I didn't have time to see if I could trace these notes there. I notice what appears to be a reconciliation in lead pencil on the back of some of those statements, and from the statements it appears that the Fairbanks [373] Banking Company were being credited from time to time for loans, and also being charged for loans when they were paid. And at one time in that reconciliation there is \$200,000 that I notice running in the reconciliation of the account. Those notes do not appear in the general ledger here, and I presume they were in the Washington Trust Company's hands, and they were given credit when their account needed the money. Just how it was treated, I am unable to arrive at, or identify the notes in payment of these. I have not been able to yet.

Q. Do you wish to examine the statements further; not just now, but before you finally conclude?

(Testimony of Sidney Stewart.)

A. No. I am willing to let my statement go as I make it. I think that is what occurred.

Q. That is all you have been able to determine from their books?

A. So far as I have examined them, yes, sir.

Mr. RIDER.—I want to read from the minutes of the meeting of the board of directors of the Fairbanks Banking Company held on July 13, 1908, and which has been received in evidence as Plaintiff's Exhibit "Y," a portion thereof under the head of "Report of officers" (Reads):

"The president submitted a written report in detail showing the condition of the affairs of the bank on July 11, 1908. The report was examined in detail, and on motion duly made and seconded, it was ordered filed. Under discussion of this report, the question of refunding to those desirous of giving up their stock in the Fairbanks Banking Company was discussed, and it was the sense of the meeting that any stockholder desirous of giving up his stock be paid for same and stock returned to the treasury of the bank.

Q. What is the total amount still due and unpaid to the creditors [374] of the Washington-Alaska Bank, as shown by the books of the receiver?

Mr. CLARK.—We object as not redirect examination.

Mr. MCGINN.—And irrelevant and immaterial, and not pertinent to any of the issues in this case.

The COURT.—Objection overruled. (Defendants except.)

(Testimony of Sidney Stewart.)

A. Do you wish to include in that the Barnette trust fund or the depositors?

Q. No, the amount due the creditors of the bank. The Barnette trust fund has nothing to do with this matter.

A. Stockholders; capital stock?

Q. No, excluding the capital stock at present.

A. \$558,335.94. That is of date March 31, 1914.

Q. That is exclusive of the amount due the stockholders? A. Yes, sir.

Q. And what is the amount due the stockholders?

A. \$159,600.

Q. You were inquired of by Mr. McGinn respecting the showing of the Gold Bar Lumber Company as to profits for the year ending October 1, 1907. Are there any papers in the possession of the receiver showing the items of profit and loss for the period from October 1, 1907, to March, 1908?

A. Yes, sir.

Mr. McGINN.—We object to that as not proper redirect examination.

Mr. RIDER.—To bring the matter up to date.

The COURT.—You may ask him, although I think it was strictly part of the direct examination.

Mr. RIDER.—Q. Have you that statement?

A. Yes, sir.

Q. What does that show? [375]

A. Statement of the Gold Bar Lumber Company October 1, 1907, to March 1, 1908. This is a statement in the files of the bank among the statements of the Gold Bar Lumber Company.



(Testimony of Sidney Stewart.)

Mr. McGINN.—We object because there is no evidence that it was before the directors at the time the bank was purchased. That is March 1st, and the whole transaction was closed up in January or February when they agreed to take over this Gold Bar stock. This is two or three months later than that. There is nothing to show that the directors had any knowledge of that.

Mr. CLARK.—What is the purpose of it?

(Argument.) (Mr. McGinn and Mr. Clark withdraw objection.)

Mr. RIDER.—Q. What does that statement show as to the gross earnings?

A. This statement was made as Loss and Gain. Total loss entry is \$14,034.44, and gain is \$7,516.06.

Q. Leaving a net loss?

A. Net loss of \$6,518.38.

Mr. RIDER.—That is all.

Mr. HEILIG.—Is that the conclusion of your examination of Mr. Stewart?

Mr. RIDER.—Yes.

#### Cross-examination.

(By Mr. McGINN.) Q. What does this statement show that the net resources of the Gold Bar Lumber Company was upon the 1st day of March, 1908?

A. \$451,755.01.

Q. Do you know whether or not the mill had been closed down at that time or not, from the examination you have made of the records? [376]

A. I believe that in 1908 the mill was closed, according to information I find from letters and cor-

(Testimony of Sidney Stewart.)

respondence, not from personal knowledge.

Q. You don't know what these items of loss were?

A. Not at all.

Mr. McGINN.—I ask to introduce this in evidence.

Mr. RIDER.—I have no objection.

The COURT.—It may be admitted (Marked Defendant's Exhibit "2.")

Mr. McGINN.—Q. I wish you would refer to the ledger account of E. T. Barnette on September 2, 1908. (Witness produces book.) That shows, does it not, that upon the 2d day of September, 1908, E. T. Barnette drew his check upon the Fairbanks Banking Company for the sum of \$75,000? A. Yes, sir.

Q. How much did he have on deposit at that time?

A. Before drawing the check?

Q. Yes, sir.

A. On the night of September 1, 1908, there was a credit balance of \$58,489.74.

Q. So, by the drawing of this check of \$75,000, he overdrew his account \$16,526.36? A. Yes, sir.

Q. State whether or not from that time on until the 25th day of October, that overdraft account was gradually reduced?

A. It was reduced, the general checking account and deposit all the way through between those dates until the 23d, when it was reduced to thirty-five nineteen, on the 24th down to twenty-one seventy-six, and on the 25th a credit balance of \$8,728.24 to his credit.

Mr. HEILIG.—What was that credit balance?

A. \$8,728.24. [377]

(Testimony of Sidney Stewart.)

(By Mr. McGINN.) Q. On the 26th what was it?

A. On the 26th was \$13,155.32.

Q. On the 23d of October how much was to his credit? A. \$27,061.36.

Q. And on the 1st of January, 1909?

A. On the 1st of January, 1909, it was \$61,534.14.

Q. When Captain Barnette drew that check of \$75,000 on the Fairbanks Banking Company, he reduced the amount due depositors that much, did he not? A. Yes, sir.

Q. And took that much money away from the institution?

A. The credit for it was money due from banks.

Q. Then upon that date two certificates of deposit were issued; one due the 1st of January, 1909, and one due the 1st of May, 1909, each for the sum of \$25,000. Isn't that approximately correct?

A. I don't remember the due dates, but the amounts are correct.

Q. Wasn't that the time they became due?

Mr. RIDER.—One was due January 1st and one July 1st.

Mr. McGINN.—January 1st and July 1st. The giving of these certificates of deposit didn't withdraw any of the funds from the bank upon the 2d day of September, 1909, did it?

A. No, he gave his notes for those certificates, the same day.

Q. There was no money taken out or withdrawn from the bank on account of them? A. No.

Q. Because they were not then due. And Captain

(Testimony of Sidney Stewart.)

Barnette paid those notes, you say, at the time these certificates of deposit became due; the first he paid upon the 1st day of January, 1909.

A. I believe the certificates were paid on the same dates that [378] the notes are marked paid.

Q. Can you refer to the books and state when it was that the Fairbanks Banking Company first began to do business with the Washington Trust Company of Seattle?

A. About April 15, 1910, is the first entry.

Q. When did the Fairbanks Banking Company credit the account of the Washington Trust Company on account of these notes that were given?

A. Well, they didn't go through this account, as I have examined so far.

Q. You say they began to do business upon the 15th day of April, 1908? A. 1910.

Q. That is the first business, as far as you know, that the Fairbanks Banking Company did with the Washington Trust Company of Seattle?

A. As shown by their books.

Q. Here is a statement: Fairbanks Banking Company in account with the Washington Trust Company of Seattle, received here May. 23, 1910, that shows that upon the 4th day of April, or 18th day of April, there was a loan made to the Fairbanks Banking Company of \$10,000, doesn't it? A. Yes, sir.

Q. And upon the 19th day of the same month there was a loan of \$20,000. A. Yes, sir.

Q. And upon the 20th of the same month \$20,000.

(Testimony of Sidney Stewart.)

A. That is what their statement shows. I take it from that.

Q. That would be before these notes could have reached the outside? A. Yes, sir. [379]

Q. Don't you know as a fact that it is the custom, and banks are obliged, just before the opening of the mining season to get accommodations from the banks outside as a general thing in the way of exchange, overdrafts on account of exchange?

A. I believe they do such things at certain times of the year, but I don't know what the dates are, or what the custom is.

Q. Now, it shows that upon May 5, 1910, there was a loan of \$100,000.00, doesn't it?

A. The statement of the Washington Trust Company on May 5th shows a credit of \$100,000; an entry there "loan."

Q. Do you know what that included?

A. No, sir.

Q. Do you know whether or not there had been a shipment of gold-dust that had been sent out to them at that time?

A. I believe there had. No, not until—The first shipment shows as being a charge to the Washington Trust Company May 26th.

Q. What was the amount of it?

A. \$185,357.91. It would probably be credited two or three weeks or a month later.

Q. You wouldn't know when that would be?

A. No.

Q. Well, isn't it true, from the memorandum you



(Testimony of Sidney Stewart.)

have made from the books, that these notes were sent to the Washington Trust Company of Seattle to cover any overdraft that this bank might have with them at certain periods of the year?

A. I believe that is what I stated.

Q. While the bullion was in transit?

A. Well, I don't know whether that was the understanding or not. [380]

[**Testimony of R. C. Wood, for Plaintiff.**]

R. C. WOOD, called as a witness for plaintiff, after being sworn, testified as follows, to wit:

Direct Examination.

(By Mr. RIDER.) Q. Your name is R. C. Wood?

A. Yes, sir.

Q. And you are one of the defendants in this case? A. Yes, sir.

Q. And you are the same R. C. Wood who was a member of the Fairbanks Banking Company, a partnership, and who was also cashier of the Fairbanks Banking Company, a corporation, and later manager of the three banks known as the Fairbanks Banking Company, the Washington-Alaska Bank, and the First National Bank during the period that they were operating together?

A. I was advisory manager.

Q. Subpoena was served upon you for the production of a certain letter dated February 29, 1908. Have you that letter?

A. I have a copy of a letter that is dated that date and I presume it is a copy of it.

(Testimony of R. C. Wood.)

Q. You have read the letter?      A. Yes.

Q. Can you from your recollection state that it is a copy?      A. I think it is.

Q. Have you any objection to us using this copy as an exhibit, or do you prefer to keep this copy in your possession and supply a copy as an exhibit?

A. I have no objection to your keeping it.

(Marked Plaintiff's Exhibit "OO.")

Mr. RIDER.—I want to ask one more question before I read the letter.    Q. The letter is addressed, and begins, "My Dear Jim." That refers to Mr. James W. Hill?      A. Yes, sir.

Mr. Rider reads Plaintiff's Exhibit "OO." [381]

[Plaintiff's Exhibit "OO"—Letter from R. C. Wood to Jas. W. Hill.]

(Reads:),

"Seattle, February 29, 1908.

My Dear Jim:

I received your telegram to the effect that you did not believe Barnette would agree to the proposition that I made. I would thank you to endeavor to dispose of my stock in the new bank at par. I would want a deposit on it, enough to guarantee its sale, and the balance to be paid as follows—25% on June 1st, 75% on July 1st, with interest at 12% per annum, and notes to be secured by the stock.

In regard to selling my stock, it might be a good idea not to let the public know that I am selling. Of course, I expect to serve as cashier until I am "ousted" or until the next meeting of the shareholders, even though I do dispose of my stock. I guess

you are misinformed when you told me that I was to be secretary and treasurer. It is evident that my efforts have been unsatisfactory to the stockholders of the new bank. One would naturally think that for the length of time I have been with the bank that I was in line for promotion. I shall always have a warm spot in my heart for the Fairbanks Banking Co. and shall always be interested in their success, as it was through my efforts that the bank was started. However, changes are bound to occur.

Sincerely (Signed) "DICK." [382]

**[Testimony of Sidney Stewart, for Plaintiff  
(Recalled).]**

SIDNEY STEWART, a witness for plaintiff, recalled, testified as follows, to wit:

Direct Examination.

Mr. RIDER.—Q. You were asked day before yesterday, the day that Mr. Hurley testified, to prepare a list of the notes named in the paper presented to Mr. Hurley, for which the bank held securities. Have you prepared such a list?

A. I have (Produces paper.)

Q. Is that the list you prepared? A. Yes.

Q. Showing the name of the note and the security held by the bank? A. Yes. [383]

Q. And the amount stated is the amount of the note, is it?

A. Yes, sir. The amount unpaid; the balance unpaid.

Q. The amount unpaid on the note?

A. The amount unpaid.

(Testimony of Sidney Stewart.)

Mr. RIDER.—I offer it in evidence, so that they may have a list of the securities.

Mr. McGINN.—That is at the present time?

Mr. RIDER.—Yes, the securities now held by the receiver. You can examine it and see if you want it more complete.

WITNESS.—In some of the descriptions there, I have used the word “jewelry,” not saying what jewelry it is; and the word “mortgage.” I made it very brief.

(Attorneys for plaintiff and defendants consult together.)

Mr. RIDER.—I would prefer that it be a little more complete, so I will not have this one marked so that a more complete list can be furnished.

WITNESS.—That list is made out to the best of my recollection as to the securities. I have kept no record like they have here in the mortgage securities record. But to the best of my knowledge and belief that list contains everything that we consider as a security at the present time.

Mr. RIDER.—In making the revised list you will have further opportunity to make any corrections, if it should be found necessary. Do you (To defendant's attorneys) wish to cross-examine him now?

Mr. McGINN.—No.

Mr. RIDER.—There are certain properties listed as securities for certain loans, and under the testimony of Mr. Hurley, the notes depend for their value upon these securities. The receiver will admit for the purposes of this suit that the following

(Testimony of Sidney Stewart.)

notes in the amounts stated in this list [384] have sufficient security back of them to make those notes worth the amount that is stated in this list, so as not to necessitate inquiring into the value of the securities. I will read them (Reads): Note of Auten & Frick in the sum of \$100, being number 3053, secured by 4 barrels of whiskey; Note of G. M. Auten in the sum of \$540, being number 3349, secured by jewelry. Note of A. S. Crane, being numbered 2882 in the sum of \$40, secured by jewelry. A. S. Crane and E. A. Crane, being number 2639 in the sum of \$20, secured by jewelry. As to the note of L. S. Ribe, number 3000 in the sum of \$256.50, the list shows that the security for that is \$75,—coming from the city on account of surveying; and the receiver admits for the purposes of this suit that that note is good as to the security of \$75. The note of Smith & Fisher, being number 2834 in the sum of \$112.92, secured by an undivided one-half of fraction opposite 2 below, first tier, left limit, of Ester, and the note of A. J. Williams in the sum of \$150, being number 2767, secured by a ring.

The WITNESS.—I stated a minute ago that that amount was the amount due on the note. That is the principal amount of the note, not considering the interest; the amount that is carried as an asset.

Mr. RIDER.—Q. This is the amount that it is carried at as an asset?

A. On the principal amount of the note. [385]

Mr. RIDER.—I have just presented the list of securities which were used yesterday evening, and



have given counsel a copy of them. On the list is marked with the letter "a" those that were admitted as being sufficient in the amount noted or stated at the time as security for the note. And I ask that the list be marked as an exhibit.

(Marked as Plaintiff's Exhibit "PP.") [386]

**[Plaintiff's Exhibit "PP"—List of Securities Held With Notes.]**

LIST OF SECURITIES HELD WITH NOTES.

Note No.	Makers.	Amount.
3053	Auten & Frick..... 4 bbls. whiskey.	\$100.
3349	Auten, G. M..... Jewelry.	540.00
1587	Berger, D. H..... Mortgage and agreement reundivided $\frac{1}{4}$ interest No. 1 Above Discovery 1st tier L. L. Engineer Creek.	550.
2384	Blodgett, James and R. Shephard..... Deposit account of Shephard Bros. amounting to 1636.53.	1,700.
1975	Barrett, Wm. .... Warehouse 3rd avenue.	8,809.21
2882	Crane, A. S..... " " and E. A..... Jewelry.	40. 20.
1591	Gelling & Bechtolt..... Bechtolt Fraction, Fairbanks Creek opp. 6 above.	1,050.00
2022	Kellogg, Chas. W..... Mortgage $\frac{1}{4}$ interest No. 1 above discovery L. L. Engineer creek.	625.
2558	Kelley, James ..... Mortgage 1/16 Gold Bug Assn. 1/16 Horseshoe Assn. LL. Ester Creek; 1/12 of an 1/16 Burton Assn. L. L. Cripple Creek; 7/32 Van Wood Assn.	4,928.24
3000	Robe, L. S..... \$75. coming from City Fairbanks Trustees account survey.	500.
2945	Rippa, Adolph ..... Fairbanks Banking Co. as Trustees for creditors has one 6-4-6 Worthington pump;	900.
2834	Smith & Fisher..... Undivided $\frac{1}{2}$ in fraction opp. 2 below 1st tier L. L. Ester.	112.92
2877	Struthers, J. F..... Ring.	100.

2857	Tharp & Rusk.....	801.
	¼ interest Capital Assn. Chatanika River.	
1982	Tanana Trading Co.....	2,175.82
	One 8x10 Engine.	
2767	Williams, A. J.....	150.
	Diamond Ring.	

[Endorsed]: #1756. Plffs. Ex. "PP." Filed in the District Court, Territory of Alaska, 4th Div. Apr. 29, 1914. Angus McBride, Clerk. By P. R. Wagner, Deputy.

[387]

### [Plaintiff's Exhibit "QQ"—Notes of Washington-Alaska Bank Past Due and not Paid.]

NOTES OF W. A. BANK WHICH WERE PAST DUE APRIL 12, 1910,  
AND NOT PAID.

Number.	Makers.	Held at	Unpaid.
1778	Williams, J. A.....	3,407.83	3,307.83
2464	Kellett & Monkman.....	906.30	906.30
2465	Peterson, Nels .....	1,560.	1,251.63
2466	" " Admr.....	2,000.	1,691.62
2506	Walker, F. B.....	1,855.	878.75
2550	Wiseman and Barclay.....	1,543.57	1,543.57
2552	Pamucinal, M. et al.....	1,526.43	1,526.43
2595	Erickson & Co.....	16.	16.
2628	Christian, John et al.....	1,598.75	1,598.75
2651	Lappi, Orne, et al.....	957.76	957.76
2716	Walker, F. B.....	1,000.	1,000.
2718	Kovaich, T. ....	685.	685.
2725	Christian, John et al.....	530.	530.
2731	Smith, Lord, et al.....	1,225.92	209.36
2754	Garvin, Simonson, et al.....	4,741.97	1,872.34
2755	" " " .....	4,890.	4,890.
2767	Williams, J. A. (ring).....	150.	150.
2779	Christian, John et al.....	530.	530.
2805	" " " .....	520.	520.
3174	Williams, Mrs. J. A.....	104.	104.
2882	Perrault, G. A.....	2,080.	2,080.
2885	Erickson & Co.....	408.	408.
2887	Kovaich, T. ....	113.	113.
2911	Christian, John et al.....	200.	200.
2959	Verneti, et al. ....	100.	100.
2970	Garvin, Andy .....	111.97	111.97
3001	Kovaich, T. ....	31.50	31.50
3026	Wooldridge, T. E. et al.....	569.	19.
3044	Jestland, T. ....	600.	600.
3070	Johnston, Chas. et al.....	530.	530.
3084	Struthers, J. F.....	208.	208.
3192	Auten & Frick.....	500.	500.
2501	Johnson, Erik et al.....	610.	310.

Number.	Makers.	Held at	Unpaid.
2834	Smith & Fisher .....	890.	112.92
1982	Tanana Trading Co. ....	2,825.82	2,175.82
2129	Maddocks, M. & K. ....	648.99	648.99
2149	Clark, W. Sam. ....	5,668.30	4,939.60
2443	Bostrom & Erickson. ....	2,925.92	2,669.37
2449	Sala, Joe .....	2,850.	2,850.
2470	Christian, J. et al. ....	3,000.	2,785.
2490	McNeer, A. H. ....	728.	726.56
2558	Kelley, James .....	6,126.25	4,928.24
2579	Ruppa, Adolph .....	4,837.	4,837.
2954	Himes, W. et al. ....	126.90	126.90
3162	Miller, H. I. ....	1,546.	1,546.
3209	Siebe & Myers. ....	563.	563.
3210	" .....	543.33	543.33
3211	" .....	1,337.50	1,337.50
3212	" .....	2,214.66	2,214.66
3215	Myers, R. R. ....	160.	156.68
1957	Anderson, O. M., et al. ....	300.	125.
2663	Wilkinson, et al. ....	4,000.	4,000.
3063	Clark & Morley. ....	7,606.60	7,606.60
2380	Burke, L. A. ....	285.	285.
3221	Anderson, L. B. ....	71.50	71.50

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2163	Heilig, Tozier, et al. ....	3,866.	669.
3080	Russell, J. H. and Heilig. ....	357.	7.
3388	Gaidos, Sandstrom, et al. ....	1,530.	1,530.
3391	" Geo. and Carl White. ....	205.	205.
3423	Hedman, John .....	100.	99.13
3284	Morency, Al. ....	4,668.	4,080.
3472	Stone & Brandt .....	4,500.	999.70
3319	Chamberlain & Curry. ....	1,571.76	1,001.30
3413	Van Winkle, R. J. ....	200.	200.

[Endorsed]: #1756. Plffs. Ex. "QQ." Filed in the District Court, Territory of Alaska, 4th Div. Apr. 30, 1914. Angus McBride, Clerk.  
By P. R. Wagner, Deputy.

[389]

(Testimony of Sidney Stewart.)

Q. Mr. Stewart, will you look at your records and give us the total amount, as shown by the books of the Fairbanks Banking Company, then known as the Washington-Alaska Bank of Nevada, of its assets on October 25, 1910.

Mr. CLARK.—To which we object as irrelevant, incompetent and immaterial, coming in too late, after the motion has been made for a nonsuit on that very matter; and we object to the plaintiff being permitted to open up their case to introduce further testimony.

(Objection overruled; and defendants except.)

Mr. RIDER.—Q. What was the total amount of the assets as shown by the books of the bank?

A. Total assets \$1,471,230.18.

Q. And the total amount of liabilities?

A. \$1,475,470.51.

Q. Capital stock outstanding?      A. \$159,600.

Q. What was the total amount of paper then past due carried by the bank as an asset on that date, and which has never been paid? [390]

A. \$224,762.49.

Q. Is there an asset of stocks included in the statement on that day?      A. Yes, sir.

Q. What is it, and what is it composed of?

A. \$417,949.

Q. What is it composed of?

A. \$341,949 capital stock of the Gold Bar Lumber Company, \$75,000 Washington-Alaska Bank of Washington; \$1000 Chena Melting Milling & Refining Company; making a total of \$417,949 in stocks.

(Testimony of Sidney Stewart.)

Mr. RIDER.—That is all.

Cross-examination.

Mr. CLARK.—Q. The assets that you have given do not include any accrued interest on any loans that were outstanding at that time carried and unpaid?

A. The accrued interest is not shown as an asset on their statement. These figures I have given you are the total of assets as shown by their daily statement.

Q. There were a large number of interest bearing loans outstanding at that time? A. Yes, sir.

Q. Have you among your papers a statement furnished to the directors at the meeting of October 13, 1910? A. I don't know.

Mr. CLARK.—That is all.

Mr. RIDER.—We rest. [391]

By Mr. McGINN.—We desire to read in evidence the deposition of J. O. McKenzie, taken pursuant to a stipulation entered into between the parties to this case (Reads deposition.) [392]

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[Title of Court and Cause.]

[Deposition of E. L. Webster et al.]

Depositions of E. L. Webster, W. H. Parsons, T. F. Ryan, W. M. Peterson, J. S. Mackenzie and Frank E. Barbour, taken in the above-entitled causes on behalf of the defendants pursuant to oral stipulation now entered into between the attorneys for the respective parties and pursuant to the same stipulation and notice for the taking of the depositions of



the witnesses Carl M. Johanson and W. G. Cassels, heretofore taken on behalf of plaintiff in the above-entitled suits, before N. W. Bolster, a Notary Public, at Seattle, Washington, on the 2d day of March, A. D. 1914, John L. McGinn appearing as attorney for the defendants R. C. Wood, James W. Hill and John L. McGinn, and also pursuant to stipulation as attorney in behalf of all the remaining defendants who are represented by McGowen & Clark as their attorneys of record, and O. L. Rider appearing as attorney for said plaintiff in the taking of said depositions of Carl M. Johanson and W. G. Cassels. [393]

NOW, THEREFORE, be it remembered that pursuant to said notice and stipulation, on this 14th day of March, A. D. 1914, at my office, room 707 Lowman Building, Seattle, King County, Washington, before me, N. W. Bolster, a Notary Public in and for said state, duly commissioned to administer oaths, etc., etc., personally appeared E. L. Webster, W. H. Parsons, T. F. Ryan, W. M. Peterson, J. S. Mackenzie and Frank E. Barbour, witnesses produced on behalf of the defendants named in the above-entitled action now pending in said court, and who being by me first duly cautioned and sworn, were then and there examined and interrogated by John L. McGinn, Esq., of counsel for said defendants, and by O. L. Rider, Esq., of counsel for said plaintiff, and testified as follows: [394]

**[Deposition of J. S. Mackenzie, for Defendant.]**

J. S. MACKENZIE, produced as a witness in behalf of defendants, being first duly cautioned and sworn, testifies as follows:

Q. (Mr. McGINN.) State your full name.

A. John S. Mackenzie.

Q. Where do you reside, Mr. Mackenzie?

A. Gold Bar, Washington.

Q. How long have you resided at Gold Bar, Washington?

A. It will be twelve years on the 18th of next June.

Q. And what have you been engaged in doing there during that period?

A. Well, I have occupied the position of foreman, superintendent and then manager.

Q. Of what?

A. Of the Gold Bar Lumber Company sawmill.

Q. A corporation organized under the laws of the State of Washington?      A. Yes, sir.

Q. When did you first go to work for the Gold Bar Lumber Company?      A. June 18, 1902.

Q. In what capacity?

A. Then I was car tallyman.

Q. How long did you continue in that capacity?

A. About one year.

Q. And then what position?

A. Then I went into the office as assistant book-keeper until May, 1906.

Q. And then what?

A. In May, 1906, I was—I occupied the position of superintendent [395] until June, 1911; from

(Deposition of J. S. Mackenzie.)

June, 1911, to the present time I have been manager.

Q. So, then, about the month of March, 1908, you were the superintendent of the Gold Bar Lumber Company? A. Yes.

Q. And as such were you familiar with the property and assets of the Gold Bar Lumber Company and its liabilities? A. Yes, sir, quite familiar.

Q. Do you remember when the stock of the corporation was acquired by E. T. Barnette, James W. Hill, R. C. Wood and Carl M. Johanson?

A. May 1, 1906.

Q. Do you know how long Mr. Wood, Mr. Hill and Captain Barnette continued to hold their stock?

A. No, I could not say.

Q. I will ask you to state whether or not during the year 1907 the Gold Bar Lumber Company purchased any additional timber? A. Yes.

Q. From whom?

A. The Weyerhauser Timber Company.

Q. How many feet?

A. Approximately twenty million.

Q. Do you know how much they paid for that timber per thousand?

A. They paid a lump sum of \$45,000, \$2.25 a thousand.

Q. Was that a fair and reasonable price for timber at that time?

(Counsel for plaintiff objects as irrelevant, immaterial and incompetent.) [396] A. Yes.

Q. I will ask you to state whether or not you are acquainted with the value of timber in Gold Bar and

(Deposition of J. S. Mackenzie.)

its vicinity during the years 1907-8 and up to the present time?

A. Am I acquainted with the value?

Q. Yes.      A. Yes, sir, fairly so.

Q. Do you regard \$2.25 a thousand a fair and reasonable price?      A. Yes.

Q. I will ask you to state whether or not that was the price at which timber was being held at that time in that vicinity?

A. Well, now, I do not know that I could say really that it was the case, because there is very little timber on the market up there; most of the timber is held by the big investors and it really is not on the market; that is you can go and buy it if you want to, but then it is not advertised and it is hard to find out just what the values are.

Q. In March, 1908, about how many million feet of timber did the Gold Bar Lumber Company own?

A. I could not say without referring to the reports.

Q. Have you the reports with you?      A. Yes.

Q. I will ask you to refer to the report and to state what it was.      A. On what date?

Q. March, 1908.

A. (Referring to report.) I would say approximately one hundred [397] forty million feet.

Q. What in your opinion was the value of that timber per thousand feet?

A. Pardon me just a minute; I have no report showing it any time in March. Our reports are all based on October 1, 1907, because that was the end of our fiscal year. Now, I will have to take that back

(Deposition of J. S. Mackenzie.)

about the one hundred and forty million feet. It was more than that; we had one hundred fifty million feet on October 1, 1908. Now I have no way of arriving at how much we would have on March 1, 1908.

Mr. RIDER.—Are you speaking of 1907 or 1908.

The WITNESS.—On October 1, 1908, we had one hundred fifty million.

Q. (Mr. McGINN.) And what would you have in October, 1907?

A. We had one hundred forty million feet October 1, 1907, and we had one hundred fifty million on October 1, 1908, for the reason that we bought the twenty million feet from Weyerhauser in the meantime.

Q. What in your opinion was the value of that timber per thousand feet in the month of March, 1908?

(Counsel for plaintiff objects as irrelevant, immaterial and incompetent.)

A. You mean what it could be purchased for?

Q. Yes, sir, what it was worth.

A. What would be the fair selling price for what we had?

Q. Yes.

Mr. RIDER.—I object to the question for the reason that in the light of what the witness has answered it is not the proper basis for obtaining the value of the timber. [398] A. From \$2.00 to \$2.25.

Q. (Mr. McGINN.) What do you base that opinion on?

A. On the fact that we paid \$2.25 to Weyerhauser



(Deposition of J. S. Mackenzie.)

for what we bought.

Q. Now, besides the timber that was upon the property what did the assets of the Gold Bar Lumber Company consist of during the month of March, 1908?

A. Mill buildings, mill machinery, logging equipment, water system, real estate, both logged off land and townsite, furniture and fixtures, cash on hand and a certain amount of supplies for the mill and camp.

Q. And stock?

A. And stock on hand, lumber stock on hand, and also the general merchandise store.

Q. Have you a statement there showing the resources and liabilities of the Gold Bar Lumber Company for the month of March, 1908?      A. No, sir.

Q. Have you any statement showing the resources and liabilities of the Gold Bar Lumber Company during the year 1908?

A. I have for September 30th.

Q. Have you that statement with you?

A. Yes.

Q. Will you produce it?

A. (Producing document.) It is dated October 1.

Q. Now, in this statement of the Gold Bar Lumber Company dated October 1, 1908, under the total of resources it shows camp equipment amounting to the sum of \$31,915.23; what did that camp equipment consist of? [399]

Mr. RIDER.—We object to any reference to the items contained in the statements or the values as

(Deposition of J. S. Mackenzie.)

shown by those items, for the reason that they are incompetent and for the further reason that they are irrelevant and immaterial.

A. Two locomotives, ten logging cars, three donkey engines, about five miles of railroad, steel, and all tools necessary to logging.

Q. (Mr. McGINN.) And state whether or not those were necessary.

A. All necessary for the purpose of logging.

Q. I will ask you to state whether the sum of \$31,915.23 was the fair and reasonable value of that camp equipment.

(Counsel for plaintiff objects as irrelevant, immaterial and incompetent.)

A. Yes.

Mr. RIDER.—That is based on that statement, is it, Mr. McGinn, the question which you are asking the witness?

Mr. McGINN.—Well, I am asking him whether, in his opinion, he considers that a fair and reasonable value?

Mr. RIDER.—At what time?

Mr. McGINN.—In October, 1908.

Mr. RIDER.—That is objected to as irrelevant, immaterial and incompetent.

Q. (Mr. McGINN.) And you were acquainted with the values of that property, of the camp equipment at that time, were you? A. Yes.

Q. Was that camp equipment of the same value, or approximately the same value in the month of March, 1908?

(Deposition of J. S. Mackenzie.)

(Counsel for plaintiff objects as irrelevant, immaterial and incompetent.) [400]

A. I should say exactly the same, possibly a little more on account of wear and tear during that time.

Q. The next item is excess freight fund consisting of \$625.16, what did that consist of?

Mr. RIDER.—In order that there may not be a constant interruption, may it be understood that an objection is made to all questions based upon the report which you are now examining him on, for the reason that they are irrelevant, immaterial and incompetent?

Mr. McGINN.—Yes, and further that you can raise any objections on the trial which you see fit.

A. I do not know, Mr. McGinn, what that item is.

Q. (Mr. McGINN.) Can you state whether or not that is a cash item?

A. Excess freight—I should judge that it was the difference between the actual freight and the basis on which the lumber was sold; in other words, what we call underweights.

Q. The next item, horses and wagons amounting to the sum of \$501.06; state whether or not the horses and wagons were worth that amount.      A. Yes.

Q. What did they consist of?

A. Three horses and two wagons, two dump-carts and all necessary equipment.

Q. And that was necessary in the operation?

A. That was necessary in the operation up there.

Q. The next item, unexpired insurance on mill \$2,026.68, what did that consist of?

(Deposition of J. S. Mackenzie.)

A. That represents insurance which had been paid up but which [401] was unexpired and therefore it was an asset.

Q. And unexpired insurance on real estate \$128.78—the same can be said of that?

A. The same thing.

Q. The next item?

A. Lands, amounting to the sum of \$3,229.57, what do you mean by lands?

A. That represents both logged off land and also timber land, without considering the value of the timber. It was carried, if I am not mistaken, at one dollar an acre on the books.

Q. And would you consider that the reasonable value? A. I consider that very, very reasonable.

Q. As a matter of fact, it was worth more.

A. Yes.

Q. How much more would you say?

A. I should say not less than three dollars at least.

Q. And the next item is lumber and logs, \$8,232.74.

A. That represents stock and logs on hand in the yard and in the pond.

Q. Was it worth that amount?

A. I would hardly be prepared to say, because I do not remember how much stock we had at that time.

Q. In carrying lumber that way, what valuation was placed upon it?

A. We figured the selling price at the time the stock is taken, less what it will cost to load it and machine it, if it needs machining.

(Deposition of J. S. Mackenzie.)

Q. In your opinion that would be a fair and reasonable price for it? [402]

A. Yes, sir, it would.

Q. The next item is light equipment \$2,879.32; what did that consist of?

A. They represented three dynamos, one dynamo engine and all wiring system, both in and around the mill and the town.

Q. Can you state whether or not that is the fair and reasonable price to be placed upon it?

A. Yes, sir, I should judge it was.

Q. It was worth that amount? A. Yes.

Q. The next item is millsite \$5,000—what do you mean by millsite?

A. The millsite represents 26.41 acres of land on which the plant was built and our lumber-yards, which I consider very reasonable.

Q. Then the mill buildings, amounting to the sum of \$24,213.87, state whether or not that was a fair and reasonable value for that.

A. Yes, sir, I should say it was very reasonable at that time.

Q. Mill equipment amounting to the sum of \$73,594.81.

A. That represents all sawmill machinery. The sawmill had a capacity at that time of about 90,000 per day; it also represents all the planing mill machinery and the shingle mill machinery, all necessary in the manufacture of lumber, and I should judge it was a conservative estimate.

Q. The Northern Bank & Trust Company \$6,519.20.



(Deposition of J. S. Mackenzie.)

A. That, I presume, represents the cash in the bank at the time of this statement, I don't know.  
[403]

Q. You were doing business with the Northern Bank & Trust Company at that time?

A. We were doing business with the Northern Bank & Trust Company at that time.

Q. The next item, office furniture \$548.58.

A. That represents safes, desks, typewriters and other furniture incident to the office. I should judge it was a very conservative estimate.

Q. Timber \$300,000.

A. That represents one hundred and fifty million feet of timber carried on our books at \$2.00 a thousand.

Q. In your opinion I believe you testified that timber was worth between two and two and a quarter a thousand.

A. Yes, sir. I based my opinion on the fact that the Weyerhauser people sold us the timber we purchased at \$2.25, and the reason they sold it was because it was logged off all around the tract that we bought and it was a pretty good buy; for that reason I think that they sold it at the price of \$2.25, and it was as reasonable as it could be bought at that time.

Q. Would you say, then, that the sum of \$300,000 for the timber was a conservative estimate?

A. Yes.

Q. Real estate amounting to \$24,500; what did that consist of?

(Deposition of J. S. Mackenzie.)

A. That is represented in town lots, and about eighteen houses that the company owned at that time.

Q. Was that a reasonable, conservative valuation placed upon that item of real estate?     A. Yes.  
[404]

Q. The Valley Supply Company stock, amounting to the sum of \$9,593.39.

A. That represents stock on hand in the general merchandise stock, together with all fixtures necessary for the conduct of the store business, and was represented by actual stock taking at the time that the statement was gotten out.

Q. And they had an inventory of the stock?

A. Yes.

Q. Water system \$10,313.82.

A. That represents the water system that was put in in 1907-8; a gravity system, piped about three miles from the hills, and was all new and in working order at the time this statement was gotten out, and represents the exact cost of installation.

Q. In your opinion, was it worth that amount?

A. All of that.

Q. The next item is accounts receivable \$7,161.47.

A. That I could not say anything about. It represents the amount that was owing us on our books at that time.

Q. You cannot say just at the present time how much of that you collected?

A. No. We were in the habit of charging off what we considered a safe amount for all accounts for the year.

(Deposition of J. S. Mackenzie.)

Q. And at this time you considered that was a fair and reasonable estimate of the amount due you?

A. That was done before the statement was gotten out or the books were closed, so that I should say that that represented the correct amount that was owing us.

Q. This shows total resources \$510,983.68; in your opinion [405] that would be a conservative estimate? A. Yes—

Q. —of the resources of the Gold Bar Lumber Company? A. Yes.

Q. Liabilities, bills payable, \$71,000; that was what you owed?

A. That was what we owed on our—I guess that was indebtedness to the bank. Was that the total liabilities, \$71,000, or just the bills payable?

Q. The bills payable, and there is unpaid taxes \$1,306.24, wages due \$149.99, accounts payable \$362.74; I will ask you to state whether or not that included all of the liabilities of the Gold Bar Lumber Company? A. Yes, sir, all the liabilities.

Q. It shows, then, total liabilities \$72,818.97.

Mr. RIDER.—On what date?

Mr. McGINN.—October 1, 1908.

Q. The statement then shows net resources \$438,164.71; would you consider that, then, a fair and reasonable statement of the net resources of the Gold Bar Lumber Company October 1, 1908?

A. Yes, sir, I would.

Q. What would you say as to the total resources of the Gold Bar Lumber Company, as compared with

(Deposition of J. S. Mackenzie.)

this statement, was in March, 1908?

A. I should say they were about the same, for the reason that the mill did not operate during 1908 at all, therefore there would be no timber cut.

Q. You say that the mill did not run during the year 1908?

A. The mill did not run during the year 1908 from November, [406] 1907, until December, 1908.

Q. Now, in the year 1909 did you also make an annual statement showing the resources and liabilities of the Gold Bar Lumber Company?

A. Yes, sir, on September 30th.

Q. Have you got that statement?

A. Yes, sir (Showing document).

Q. Now, this statement showing the net resources on October 1, 1909, sets forth the assets and liabilities of the Gold Bar Lumber Company, and without taking up the time of going into each one of these items separately as I did with you in the former statement of October 1, 1908, I will ask you whether the amounts placed opposite these different items of assets was a fair, and reasonable and conservative estimate of the value of those assets at that time.

Mr. RIDER.—To which the plaintiff objects for the reason that it is irrelevant, immaterial, incompetent, and objects to any examination based upon this statement for these reasons.

A. (Witness examines and compares the statements.) Yes, I should say that was a reasonable valuation.

Q. (Mr. McGINN.) It places a valuation on bills

(Deposition of J. S. Mackenzie.)

receivable in the sum of \$350.

A. That represents an account that was owing us on which we had a note; we had taken a note to secure us.

Q. Do you remember whether that was paid or not?

A. No, it was not paid. At that time we considered it good, but it has been charged off since.

Q. It fixes the camp equipment at \$35,503.18; do you [407] consider that a fair and reasonable and conservative value of the camp equipment at that time?

A. Well, I don't understand why it should have been any higher then, Mr. McGinn, in 1909, than it was in 1908, unless there was something purchased in the meantime—if there was I do not remember it.

Q. You do not remember it?

A. No; there may have been rails purchased, which would raise the valuation.

Q. But what you carried this for on the books of the company was a conservative estimate?

A. What we considered a conservative estimate.

Q. —of the value of the property. A. Yes.

Q. It shows cash \$620.71, cook-house supplies \$149.95; was that the amount which you really had on hand at that time? A. Yes.

Q. And it was the value?

A. Yes, sir, it was represented by actual inventory.

Q. Excess freight fund, amounting to \$592.86, that is correct, is it? A. Yes.

Q. And horses and wagons \$283.06; *would* would



(Deposition of J. S. Mackenzie.)

you say about that being fair and reasonable?

A. I presume that is correct. I think that we had reduced it to two horses instead of three.

Q. It was worth that amount?

A. Yes, it was worth that amount.

Q. Then comes the unexpired insurance on the mill, \$3,551.54, [408] unexpired insurance on real estate \$154.02. What you have stated in regard to the statement of October, 1908, will also apply to this statement of 1909. A. Yes, sir.

Q. And you carried land at this time at \$3,290.57; do you consider that a fair and reasonable and conservative value?

A. Yes, that is still based on a dollar an acre.

Q. And in your opinion, how much was it really worth at that time?

A. Two dollars and a half to three dollars.

Q. The next item is lumber and logs \$52,600.33; what did that consist of?

A. That represents the stock in the yard and the logs in the pond, and I should judge it would be right, because we carried a very heavy stock at that time. The lumber market was suffering quite a depreciation at that time and we were not moving much stock.

Q. And then the mill buildings \$5,000.

A. That is the millsite.

Q. The millsite at \$5,000; that is the same as in 1908?

A. Yes, sir. We always carried it at that, although we consider it is more valuable now than it

(Deposition of J. S. Mackenzie.)

was at that time, still we always carried it at \$5,000.

Q. You considered it worth \$5,000 in 1908?

A. Yes.

Q. Mill buildings amounting to the sum of \$27,-507.94.

A. That I consider a conservative estimate for the buildings.

Q. Mill equipment \$89,251.36.

A. That I should judge to be all right, because we had [409] increased the capacity of the mill from ninety to one hundred thousand during 1909.

Q. And the next is the mill supplies, amounting to the sum of \$965.57.

A. That I know to be correct because it represents the tools, the movable tools which are in use around the mill at all times, and they are always around about the same.

Q. And that was a fair and reasonable value?

A. Yes, sir; we are carrying at the present time about \$1,300.

Q. National Bank of Commerce \$1,249.43.

A. That, of course, I could not say. That represents our cash balance in the bank, evidently.

Q. The next item is furniture and fixtures \$718.58; would you say that was a fair, reasonable and conservative value of that asset?

A. Yes, sir. We had purchased additional fixtures and furniture for the office in the meantime.

Q. The next item is real estate \$23,550; what would you say about that?

A. That I should judge to be all right.

(Deposition of J. S. Mackenzie.)

Q. The previous year you carried your real estate at \$24,500.

A. We had probably sold some lots in the meantime.

Q. The next item is the Valley Supply Company \$12,051.99, how about that?

A. That is right. That represented an increase in the stock. It was lower in 1908 on account of the plant not operating. [410]

Q. The next is the water system \$10,341.59.

A. That is correct. We never depreciated the water system for the reason that we figured that the extensions we were putting in each year would offset any depreciation which might take place.

Q. The next item is timber \$271,032.73.

A. I presume that is correct. It represents the actual stumpage carried at \$2.00 on our books. Of course, I could not say whether we actually had that much or not; it is presumed that it is correct.

Q. You probably deducted from your timber what had been cut?

A. We deducted every year what we took off, and carried forward the balance on October 1st of each year at \$2.00.

Q. The next item is accounts receivable amounting to the sum of \$20,878.87.

A. Of course, I could not say as to that.

Q. You considered that correct at that time?

A. Those were considered good accounts.

Q. You had wiped out what you considered bad accounts prior to this time?

(Deposition of J. S. Mackenzie.)

A. We had wiped out the bad accounts prior to that time.

Q. This statement shows total resources \$560,-852.02, and the liabilities, bills payable \$100,000; liability insurance \$839.40; accrued interest \$805.17; unpaid taxes, \$1,000.08; accounts payable \$11,-082.49, and wages due \$8,370.27, making a total of liabilities of \$122,097.41; I will ask you to state whether or not that included all the liabilities of the Gold Bar Lumber Company.

A. That included all the liabilities.

Q. This shows, then, net resources October 1, 1909, \$438,754.61; [411] I will ask you to state whether or not, in your opinion, that was a fair, reasonable and conservative estimate of the net resources of the Gold Bar Lumber Company?

A. Yes, sir, in my opinion that is a fair valuation.

Q. When did you make out your next statement?

A. We made out the next statement on September 30, 1910.

Q. Have you got a copy of that statement with you? A. Yes, sir. (Showing document.)

Q. Here is the statement of the Gold Bar Lumber Company of October 1, 1910, which shows resources and liabilities, and places a separate valuation on the separate items enumerated here. I am not going to take up the time in going through each one of these seriatim, but I will ask you to state whether or not the amounts set opposite these items of resources in your opinion are fair and reasonable, conservative estimates of the value of the Gold Bar Lumber Com-

(Deposition of J. S. Mackenzie.)

pany at that time.

Mr. RIDER.—To which plaintiff objects for the reason that it is incompetent and immaterial, and objects to any examination based upon such type-written statement, for the reason that the same is incompetent, irrelevant and immaterial.

A. The only item I would be in doubt about would be the lumber and logs which are shown here at \$59,-290, because I do not remember how much stock we had on hand.

Q. (Mr. McGINN.) Outside of that, you think the others are all right.

A. Yes, sir; I know that we had a heavy stock at that time; during 1908, 1909 and 1910 we had a heavy stock of lumber.

Q. You did not carry on your books any more than what you [412] actually had?

A. No, sir, that item is based on actual inventory.

Q. That item is based on actual inventory?

A. On actual inventory at the time the statement was made out there, and it was done so every year and it represents the market price of the lumber less what it would cost to put it on the cars.

Q. That shows the total resources of the Gold Bar Lumber Company October 1, 1910, amounting to \$566,330.97; now in your opinion that would be the fair and reasonable, conservative estimate of the total resources of the Gold Bar Lumber Company?

A. Yes.

Q. The statement also shows liabilities amounting to the sum of \$116,859.56; does that show the total



(Deposition of J. S. Mackenzie.)

liabilities of the Gold Bar Lumber Company?

A. Yes.

Q. The statement then shows net resources as of that date \$449,471.41; would you say that that was the fair and reasonable, conservative estimate of the value of the net resources of the Gold Bar Lumber Company at that time?

A. Yes, I should judge it was.

Q. Now, in these statements you carry your timber, we will say in this statement of October 1, 1908, at \$300,000. A. Yes.

Q. And that represented 150,000,000?

A. 150,000,000.

Q. 150,000,000 at— A. At \$2.00 a thousand.

Q. How did you estimate the number of feet of timber which [413] you had on the property?

A. We had it cruised.

Q. By whom? A. A. L. Graham.

Q. When was that cruise made?

A. Well, about April, 1906, it was cruised just before the plant changed hands on May 1st.

Q. I will ask you to state whether or not you found that the timber ran ahead of the cruise?

A. Yes, sir.

Q. And what percentage? A. 12½.

Q. So then, as a matter of fact, there should be added to these items about 12½ per cent greater than what your inventory showed.

A. Yes, sir, on that one particular item of timber.

Q. And that applies to all of these statements?

A. Yes.

(Deposition of J. S. Mackenzie.)

Q. During all of these years, that is 1908-9-10, in your opinion the Gold Bar Lumber Company was worth what these statements shows it was worth?

A. Yes.

Mr. McGINN.—I ask that a copy of these statements be attached to the deposition of the witness and marked “Defendants’ Exhibits No. 9, No. 10 and No. 11.”

Mr. RIDER.—To which the plaintiff objects for the reason that the same is incompetent, irrelevant and immaterial.

(Documents above referred to are marked respectively “Defendants’ Exhibits Nos. 9, 10 and 11,” attached hereto and returned herewith.) [414]

Q. (Mr. McGINN.) These statements were taken from what?

A. They were taken from our general ledger.

Q. Where are those books now?

A. At Gold Bar.

Q. And statements of this kind were furnished to the Fairbanks Banking Company? A. Yes.

Q. And also afterwards to the Washington-Alaska Bank? A. Yes, sir.

Q. And statements of that kind have been furnished to the receiver since his appointment, have they not?

A. Yes. Well, I would like to say this, that during the year 1913 statements were furnished to Mr. Johanson with copies for Mr. Noyes; and when I was in Valdez Mr. Noyes told me that Mr. Johanson would have complete charge.

(Deposition of J. S. Mackenzie.)

Q. When was that?

A. That was in December, 1912. Prior to December, 1912, I had mailed Mr. Noyes copies of these statements myself direct to Fairbanks.

Q. What did Mr. Noyes tell you at that time?

A. Mr. Noyes told me then in December, just before I left Valdez, that Mr. Johanson would have complete charge out here and that I would be responsible to him; consequently since I came back from Valdez I have mailed all copies of the statements to Mr. Johanson here in Seattle with copies for Mr. Noyes.

Q. Did Mr. Johanson then have the management of the property?

A. In an advisory way, yes. [415]

Q. What do you mean by "in an advisory way"?

A. Well, he never stayed there, but he just came out there at intervals.

Q. How often would he come there?

(Counsel for plaintiff objects as irrelevant, immaterial and incompetent.)

A. Three or four times a month, from two to four times a month.

Q. And how long would he stay there?

A. Sometimes a day and sometimes he would stay there a week.

Q. Do you know what compensation he received as manager?

(Counsel for plaintiff objects as irrelevant, immaterial and incompetent.)

A. Yes, sir, he received from one hundred fifty to

(Deposition of J. S. Mackenzie.)

three hundred dollars a month.

Q. One hundred fifty dollars a month during certain periods and three hundred dollars a month during certain other periods.

A. Yes, sir, one hundred fifty dollars a month during some periods and three hundred dollars and two hundred fifty dollars during certain periods.

Q. When did he receive the three hundred dollars a month?

Mr. RIDER.—All of this examination is objected to as irrelevant, immaterial and incompetent respecting Mr. Johanson's connection with the Gold Bar Lumber Company or his conduct of the business or the salary that he received.

A. (By the Witness.) For about five months 1913 he received three hundred dollars a month.

Q. (Mr. McGINN.) How long did he continue to occupy that [416] position?

A. Up to the present time, I think.

Q. He is still occupying it, is he?

A. Well, now, I am not sure of his position since the Dexter-Horton National Bank has control of the stock; it has not been explained to me. He is not on the salary list any more.

Q. He is not on the salary list any more?

A. No, sir, not since January, 1914.

Q. Has he been over there since that time?

A. Yes, sir, a few times.

Q. And you are in the exclusive charge of the property now? A. Yes, sir.

Q. Has the mill been operated during the year

(Deposition of J. S. Mackenzie.)

1913? A. Yes, it was operated ten months.

Q. Are you acquainted with the handwriting of Carl M. Johanson? A. Yes, sir.

Q. I show you now what has been marked Defendants' Exhibit No. 6 for the purpose of identification, and which purports to be a letter from Carl M. Johanson to W. H. Parsons, dated October 13, 1913, and I will ask you to state whether or not that is his signature (showing document to witness)?

Mr. RIDER.—I object to that is irrelevant, immaterial and incompetent.

A. Yes, sir, it is.

Mr. RIDER.—And I make the further objection that Mr. Johanson has appeared here as a witness and the letter was not presented to him for identification or explanation. [417]

Q. (Mr. McGINN.) Attached to this letter is a statement showing the resources and liabilities of the Gold Bar Lumber Company September 30, 1913, I will ask you if that is the time when you made your annual statement. A. Yes.

Q. This statement shows that the net resources on September 30, 1913, amount to the sum of \$344,-941.92, I will ask you to state whether or not, in your opinion, the net resources of the Gold Bar Lumber Company on that date was that amount?

Mr. RIDER.—That is objected to as irrelevant, immaterial and incompetent and the further objection to any examination based upon such printed statement for the reason that it is incompetent, irrelevant and immaterial.



(Deposition of J. S. Mackenzie.)

A. Yes, I should say that was a conservative estimate.

Q. (Mr. McGINN.) On the 30th day of September, the Gold Bar Lumber Company charged off bad accounts and depreciated some of the items in order to make them reasonably near their true value.

A. Yes.

Q. As nearly as possible their exact value, isn't that true? A. Yes, sir.

Q. Do you know what that depreciation amounted to?

Mr. RIDER.—I object to that as irrelevant, immaterial and incompetent—what year, Mr. McGinn?

Mr. McGINN.—September 13, 1913.

Mr. RIDER.—I object to that as irrelevant, immaterial and incompetent.

A. I do not remember the exact amount; it was somewhere between thirty-five and forty thousand dollars. [418]

Q. (Mr. McGINN.) This letter of Mr. Johanson's, he says the depreciation was something like \$40,000.

A. Yes, sir, I think it was about \$38,000.

Q. Do you know the amount of timber that you had on hand at that time standing?

(Counsel for plaintiff objects as irrelevant, immaterial and incompetent. )

A. About 83,000,000 feet.

Q. What, in your opinion, was the value of that timber at that time per thousand feet?

(Counsel for plaintiff objects as irrelevant, imma-

(Deposition of J. S. Mackenzie.)

terial and incompetent.)

A. What we were carrying it at, or what I would consider it worth?

Q. What you would consider it worth.

A. I should think it would be worth two and a half a thousand.

Q. What were you carrying it for?

A. Two and a quarter.

Q. Those reports were made out to the best of your ability and judgment, were they not?

A. Yes.

Q. And based upon actual values as nearly as you could determine them?

A. Yes, sir, in our judgment based on actual values.

#### Cross-examination.

Q. (Mr. RIDER.) Mr. Mackenzie, when does the fiscal year of the Gold Bar Lumber Company begin—October 1st? A. Yes. [419]

Q. And all your statements were based upon September 30th, or October 1st, because that is the beginning or the end of the fiscal year? A. Yes, sir.

Q. And at that time you balanced up the books of the company for the year. A. Yes, sir.

Q. And arrived at the book valuation of the company's property at that time? A. Yes, sir.

Q. You carry in those statements an item of surplus; is that the difference between your liabilities and your resources? A. Yes, sir.

Q. And it shows the net resources?

A. It shows the net resources.

(Deposition of J. S. Mackenzie.)

Q. The surplus account is the net resources?

A. Yes, sir.

Q. Have you with you a statement of the condition of the Gold Bar Lumber Company on October 1, 1907?      A. Yes, sir (showing).

Q. Have you a statement of the condition on May 1, 1906?

A. No, I have not.    October 1, 1906, is the nearest I have to that.    May 1, 1906, was the time that the new company took it over?

Q. Yes.      A. Yes.

Q. Have you an extra copy of the statement of October 1, 1907?

A. No, I have not an extra copy of any of those—all the extras were sent into the bank.

Q. A copy of the statement of October 1, 1907, was furnished [420] to the bank, was it?

A. Well, now, I could not just exactly say that, Mr. Armstrong was manager at the time. Still I know it to be a fact that he always mailed the bank copies.

Q. This copy which you have here shows your net resources on October 1, 1907, \$359,119.18.

A. Yes.

Q. That is correct, is it?      A. Yes.

Q. And that is a fair and reasonable valuation of the net resources at that time?

A. Well, I should say not, for the reason that the timber at that time was carried at one dollar and a half, whereas we considered it worth two dollars.

(Deposition of J. S. Mackenzie.)

Q. Well, that is what you carried it on the books at?     A. Yes.

Q. Included in that \$359,119.18 is the \$12,000 capital stock, is it not; can you tell me from an examination of it (handing document to witness)?

A. It does not show it as a liability. I should judge it was not entered—it does not show it as a liability.

Q. I wish you would look at that.

A. (Examining document.) It is evident from an examination of the comparative statements that it must have been included.

Q. This statement of October 1, 1907, shows your timber lands as \$204,956.05.     A. Yes, sir.

Q. And that is correct, is it?

A. That is what we carried it at in our books.

[421]

Q. Now, if I caught your answer right in answer to a question of Mr. McGinn's, you stated that the second cruise which you had made of the timber showed that your valuation should have been increased  $12\frac{1}{2}$  per cent.

A. No, not based on any second cruise—based on the actual cut, as compared with the cruise—it overran.

Q. And these valuations based on that second cruise should be increased  $12\frac{1}{2}$  per cent.

A. Not based on the second cruise. We never had a second cruise. The timber was cruised in April, 1906, and taking one section of the land, taking the actual cruise on that section of land and comparing

(Deposition of J. S. Mackenzie.)

it with the actual cut which our mill made from that, it has overrun  $12\frac{1}{2}$  per cent.

Q. Then these valuations should be increased  $12\frac{1}{2}$  per cent, that is as to the value of the timber, as based on the difference between the cruise and the cut.     A. Yes.

Q. That, you think, would be a fair and reasonable increase to add to the \$204,956.05—that that should be increased  $12\frac{1}{2}$  per cent?     A. Yes.

Q. And then you would have a fair and reasonable valuation of the property—of the timber lands.

A. No; I contend that while we carried that stumpage at a dollar and a half, that it was carried too low.

Q. Well, you said the difference between your cut and your cruise was  $12\frac{1}{2}$  per cent.

A. Yes,  $12\frac{1}{2}$  per cent.

Q. And these valuations of \$204,956.05 was based on your [422] cruise, were they not?

A. Yes, sir.

Q. In order to bring that to its fair valuation it should be increased  $12\frac{1}{2}$  per cent, should it not?

A. Yes; of course that would depend entirely on what you were carrying it at.

Q. Well, you were carrying it at \$204,956.05, based on your cruise, as I understand it?

A. Yes, all right.

Q. Mr. Mackenzie, you were with this Gold Bar Lumber Company prior to the time that Mr. E. T. Barnette, Mr. Hill and Mr. Wood bought in there?

A. Yes, sir, four years before that.



(Deposition of J. S. Mackenzie.)

Q. Do you know how much they paid for their four-fifths interest in the property?

A. As I understand it they bought the entire property, didn't they?

Q. No, they just bought a four-fifths interest.

A. Outside of Mr. Johanson?

Q. Mr. Johanson retained his interest.

A. Mr. Johanson bought the property.

Q. Johanson bought it?      A. Yes, sir.

Q. Do you know how much they paid for the entire property?      A. \$297,000,000.

Q. That was for the entire property?

A. Yes, sir.

Q. How much of that was paid in cash, do you know?      A. I could not say.

Q. Do you remember about a note being given at that time [423] for about \$98,000?

A. I do remember that there was a note, but I could not say the amount of it.

Q. Do you remember who that note was given by and to whom?

A. I am inclined to think that it was given by Mr. Johanson to O. S. Lewis, the former owner.

Q. Was it not given to the Scandinavian-American Bank and the proceeds given to Mr. Lewis?

A. No, well, I could not say as to that; I know that the deeds were put in escrow in the Scandinavian-American Bank.

Q. Haven't you got your books with you to show those original entries?      A. No, sir.

Q. Would you be able to identify a copy of those

(Deposition of J. S. Mackenzie.)

original entries? A. I don't know that I would.

Mr. RIDER.—I think I have what purports to be a copy of them.

Q. Do you remember about a note that was given by the Gold Bar Lumber Company, or on which the Gold Bar Lumber Co. was liable, to the Scandinavian-American Bank in the sum of \$80,000?

A. No, I don't know anything about that.

Q. Now, was there a charge made for depreciation of those properties, more particularly its buildings and equipment in 1907, prior to making the statement of October 1, 1907?

A. That I could not say, Mr. Rider, I think it shows the losses and gains.

Q. It shows an item of depreciation, too. [424]

A. Yes, sir, the depreciation on October 1, 1907, yes, sir—it shows six items of depreciation.

Q. Totaling how much, in round numbers?

A. Approximately fourteen or fifteen thousand dollars.

Q. Has there been any charge for depreciation made since that time, prior to the one which you made last fall, as you have testified about, of the thirty-five or forty thousand dollars?

A. There was one made in—a depreciation charged off in 1912.

Q. And also in 1911?

A. Also 1911, but I could not say between the years 1907 and 1911, without reference to the books.

Q. How much do you estimate the percentage of depreciation to be annually on that property?

(Deposition of J. S. Mackenzie.)

A. We charge a thousand dollars a month on the mill—I should say about ten per cent.

Q. That depreciation would attach to what items of the property?

A. Mill buildings, mill equipment and camp equipment and office furniture and fixtures.

Q. Have you with you any data showing the amount of timber that was cut during the time that the Fairbanks Banking Company, or its successors the Washington-Alaska Bank, owned a portion of the stock of this company.

A. I do not know when the Fairbanks Banking Company acquired it.

Q. It acquired it in March, 1908—that would be for the years 1908-9-10-11.

A. Well, the only way would be to take the statement for October, 1907, and figure the timber at that time and then [425] take it for October, 1911—that would be about the only way I could get at it.

Q. And you have no items with you showing that?

A. No, sir.

Q. Do you carry on your books any data from which you could compute the number of feet cut during those years?

A. Yes, sir, we would take that from the input of our camp.

Mr. RIDER.—Would it be agreeable to have that attached to the deposition?

Mr. McGINN.—I have no objection.

Mr. RIDER.—Will you make a statement then showing annually the amount of the cut for the years

(Deposition of J. S. Mackenzie.)

1908-9-10 and send it to the clerk to be attached to the deposition?

A. You want the timber removed during those years?

Q. The total number of feet cut.

A. All right, sir.

(Document referred to is marked Plaintiff's Exhibit "D" attached hereto and returned herewith.)

Q. Your mill was closed in the fall of 1907?

A. Yes.

Q. At what date?

A. About the middle of November.

Q. And remained closed until December, 1908?

A. Yes, sir.

Q. How much does it cost to start your mill after it has been closed for a year?

A. Why, I should say about \$8,000.

Q. By reason of the mill being closed, the company sustained losses through the moving away of its employees who would have purchased supplies of the Valley Supply Company, [426] didn't it?

A. Yes.

Q. They moved away when the mill closed?

A. Yes, sir.

Q. They were also the principal users of the water that was supplied by the water plant too, were they not? A. Yes.

Q. Has the company declared any dividends since March, 1908? A. No, sir.

Q. The profits that the company have made have all been turned back into the plant by way of repairs

(Deposition of J. S. Mackenzie.)

and increase of equipment?     A. Yes, sir.

Q. All of its profits have gone back?

A. Yes, sir.

Q. And as the timber is cut, the most valuable asset of the company is being consumed, is it not?

A. Yes. It does not seem to me that you completed what you started in regard to the loss sustained by closing in 1908.

Q. All right, state it then.

A. I want to say that the reason that the plant shut down in 1907 was because the railroads attempted to raise the rate ten cents a hundred pounds on all transcontinental freight and the Lumberman's Association figured that it would be impossible for us to pay it. That was the reason why the plant shut down, and then after we had shut down there was the panic of 1907, so that it would have been impossible to have operated, except at a great loss, during that year. [427]

Q. That shut-down was had with the approval of Mr. Barnette, Mr. Hill and Mr. Woods, wasn't it?

A. I could not say as to that. Mr. Armstrong was the manager.

Q. Mr. Armstrong was in charge at that time?

A. Yes, sir.

Q. You do not know anything about the letters and telegraphic correspondence between them at that time?     A. No.

Q. You do not know anything about the financial straits that the Gold Bar Lumber Company was in at that time by reason of certain pressing claims due



(Deposition of J. S. Mackenzie.)

to the Scandinavian-American Bank?

A. No, sir, I could not say anything about that.

Q. You do not know whether the Scandinavian-American Bank was pressing them for payment at that time or not, on their indebtedness?

A. I never heard of it.

Q. Do you know whether or not the stock of the Gold Bar Lumber Company held by Hill, Wood and Barnette was involved in litigation at that time?

A. I did hear—

Mr. McGINN.—That is admitted.

Mr. RIDER.—To what extent do you make your admission, Mr. McGinn?

Mr. McGINN.—In regard to the Causten matter, that is all recited in the agreement.

Mr. RIDER.—That did not occur until March, that agreement, and I do not know myself when the stuff did become tied up. I do not know whether it was tied up as late as [428] September or not.

Mr. RIDER.—That is what I am asking him particularly about.

Mr. McGINN.—I know, Mr. Rider, that there was a suit between Causten and Barnette, but I do not know anything about the circumstances.

Q. Do you know whether the stock was tied up by reason of that suit in the fall of 1908? A. No, sir.

Q. Do you know whether the stock was tied up by reason of that suit prior to the shutting down or not?

A. No.

Q. You mean that you don't know?

A. I don't know; I never heard at that time that it was.

(Deposition of J. S. Mackenzie.)

Q. Now, Mr. Mackenzie, all the timber immediately adjacent to the mill belonging to the Gold Bar Lumber Company has been cut, has it not?

A. We have—well, now—we have twenty-five million feet.

Q. How near the mill?

A. We have fourteen million feet nine miles from the mill where we were logging at the time we closed down on December 20th last year, and then we have eleven millions which is about a mile farther. The balance is about four and a half miles east of the mill.

Q. That is the closest timber you have?

A. Yes, sir, but it is really closer to the mill than where we are logging at the present time. [429]

Q. But what I mean is in regard to the property immediately around the mill in the valley, that has all been cut?

A. Oh, yes, that has all been cut.

Q. And the valley land has been sold, has it not?

A. Yes, sir.

Q. Do you know when it was sold?

A. It has been sold—been selling more or less ever since the company bought it.

Q. That is the land between the mill and the mountain? A. Yes, sir.

Q. Now, you have to haul the timber by rail from where it is cut, down to the mill? A. Yes.

Q. How far do you have to haul it?

A. About nine miles.

Q. And that is over that mountain?

(Deposition of J. S. Mackenzie.)

A. Yes, sir.

Q. How many switch-backs are there on that mountain to get to where you are cutting?

A. Eleven.

Q. There are eleven switch-backs?      A. Yes.

Q. The cost, then, of the production is increasing by reason of the distance of the lumber from the mill and the difficulty in getting at it?

A. Slightly.

Q. Over what it was in 1907 and 1906, is it not?

A. Slightly, I should not say very much.

Q. The farther back on the mountain you go the more it costs you to produce the lumber, doesn't it, because of the [430] distance you have to haul it and the difficulty?

A. That doesn't make very much difference in the cost.

Q. It does not?

A. When the logs are once loaded on the car it is immaterial whether you haul them nine miles or five miles, it costs a little more but not as much as a person would think, in proportion.

Q. The land back on that mountain is all rocky, rough land, is it not?      A. Yes, sir.

Q. And when cleared off it will be worthless?

A. It might be worth something for grazing, but not very much.

Q. How much would it be worth an acre?

A. On an average?

Q. Yes.

A. It could not be worth over three dollars.

(Deposition of J. S. Mackenzie.)

Q. Is there any of the land now owned by the Gold Bar Lumber Company which, when logged off, will be suitable for agricultural purposes?

A. There are places here and there.

Q. Just little spots?      A. Just benches.

Q. Just little benches?      A. Little benches.

Q. Any considerable quantity?      A. No.

Q. Mr. Mackenzie, you remember of my being out there at the mill last fall with the photographer, don't you?      A. Yes. [431]

Q. I wish you would examine these plates numbers 1 and 2, which have heretofore been offered in evidence, and tell me if that represents the view of the Gold Bar Lumber Company's property from your mill and between your mill and the mountain and on the mountain.

A. We do not own any of that now.

Q. Does it show any that is owned by the Gold Bar Lumber Company?      A. Yes.

Q. Back on the mountain?

A. Up there (showing).

Q. This low land in the valley between the bottom of the picture and the mountain, the logged-off land was formerly owned by the Gold Bar Lumber Company, wasn't it?      A. Yes.

Q. It has been sold?      A. Yes.

Q. And when was it sold?

A. Some of it was sold as far back as 1903.

Q. And when was the last of it sold?

A. 1912.

Q. How much of it had been sold prior to March,

(Deposition of J. S. Mackenzie.)

1908?      A. Very little.

Q. Can you give me an estimate in acres—that is the time when the Fairbanks Banking Company acquired it, March, 1908?

A. I should say—do you mean what would be shown in this picture?

Q. Yes, in these two pictures.

A. One hundred and fifty acres. [432]

Q. And then when was the remainder of it sold; between what dates?

A. Between 1908 and up to March, 1913.

Q. What portion of it was sold prior to January, 1911, or if you can remember the time it was sold approximately. I would like to have it that way.

A. I don't know that I could recall that.

Q. Now, will you examine plates Nos. 4 and 5, which are a closer view of the same background shown in plates Nos. 1 and 2 and state whether they show the property of the Gold Bar Lumber Company.

A. Yes. That was the property of the Gold Bar Lumber Company—nothing that they own now.

Q. There is nothing immediately in the foreground that they own now, but it shows something back on the mountain in the rear, that is owned by them now?

A. No; I think it is all over the hill—you can't see that.

Q. Does that show the general character of the land that is now owned by the Gold Bar Lumber



(Deposition of J. S. Mackenzie.)

Company after it has been logged off?

A. Yes, sir.

Q. Whereabouts is the property that you bought from Weyerhaeuser which you referred to, that is, about how far and in what direction from the mill—I will take that as a starting point?

A. It is a half a mile north of the mill.

Q. And looking from the mill toward the mountain, in which direction are you looking?

A. Almost due north.

Q. Then this Weyerhaeuser property is no longer owned by the [433] company? A. No, sir.

Q. It has been sold? A. Yes.

Q. And logged off? A. Yes.

Q. What was the character of the timber on the Weyerhaeuser property?

A. It was good, sound timber.

Q. Was it in the valley? A. Yes.

Q. It was valley stuff? A. Yes, sir, part of it.

Q. Is that valley timber larger and of better quality than the timber up on the mountain?

A. It is larger, but not so sound. I should say it would run a little more to clears than the mountain timber.

Q. Do you mean that it would cost more to clear the land?

A. No, I mean that it would run a little more to the upper grades of timber.

Q. It would be a little better class of timber than the timber up on the mountain, you mean?

A. Yes. I want to say, Mr. Rider, that there were

(Deposition of J. S. Mackenzie.)

two tracts bought from Weyerhauser. One was eighty acres on the flat; the other was a quarter section adjoining where we are logging now—in fact, a part of what we are logging now.

Q. Did you pay the same price for both of them?

A. Yes, sir.

Q. Now, the value of the townsite property carried on these statements has been—the book value of it has been increased [434] a couple of times, has it not? A. Yes, sir.

Q. Do you remember what it was carried at in October, 1907?

A. No, I do not. The statement says that the real estate was \$18,400.

Q. That means the townsite property?

A. Yes, sir.

Q. That valuation was after the increase had been made?

A. Yes, sir. May I state the reasons for that increase? The company built ten houses in the town at a cost of, I should say, roughly speaking, \$600 apiece, and three houses at about \$300 apiece. That was the reason for the increase.

Q. When was the next increase made in that property? A. I don't think there was any.

Q. Was there not two increases made in that property?

A. I don't remember. I see it was increased again in 1909.

Q. Increased how much at that time?

A. \$5,000.

(Deposition of J. S. Mackenzie.)

Q. Then that makes a total increase of \$18,000?

A. No, a total increase of \$10,000 since 1906.

Q. What was the amount of the first increase?

A. In 1906 the real estate is listed at \$13,744, and in 1907 at \$18,400 a difference of \$4,800, and in 1909 \$23,550, that was an increase of \$10,000 in the two years.

Q. Do you remember how many acres there were that were purchased from Weyerhaeuser?      A. No.

Q. 320, were there not?

A. No, I would not think there was; I think it was about [435] 240. I should judge it was a quarter of a section and two 40s. I do know that the tract in the valley was 80.95 acres. I know that to be a fact—the piece on the hill, I think, was a quarter of a section.

Q. My memorandum shows 320.95 acres.

A. I do not know why that should be, because in section number 29, that is the piece on the hill, originally the company owned half of it and they bought 160 acres more which gives them three-quarters of a section, and the Port Blakely Mill Company still owns the other quarter, and on the flat there was 80.95 acres. Still I am not positive about that, but that is my impression. I should not be surprised though but that the 320 acres is right, because 240 acres would hardly cruise 20,000,000 feet.

Q. I think that is right.

A. There was 5,000,000 on the flat, which would leave 15,000,000 on the hill, and it would take pretty near half a section to cruise that much.

(Deposition of J. S. Mackenzie.)

Q. And that was purchased for \$45,000.

A. Yes, sir.

Q. Was the timber on that heavier, that is, did it cruise more feet per forty or per acre, from your estimate than the timber up on the mountain?

A. The eighty acres would on the flat.

Q. Well, how about the other?

A. The other would not. It was just the same class of land that we are logging now.

Q. What was the condition of the lumber market in the fall of 1907 and the first part of 1908?

A. Very poor. [436]

Q. When that increased valuation of timber lands was made it was credited to the surplus account, wasn't it? A. Yes.

Q. And that partly accounts for the increase in the surplus account? A. Yes.

Q. Then there was also \$100,000 in cash, paid in by the stockholders, was there not?

A. I don't know anything about that.

Q. You don't know anything about that being made at any time?

A. No, sir, I never heard of it.

Q. December, 1906, do you know about the stockholders paying in \$100,000 in cash?

A. I never heard of it. Mr. Johanson was manager at that time and Mr. Armstrong was assistant.

Q. You do not know anything about it being carried to the surplus account then?

A. No, I do not. My duties were all outside at that time.

(Deposition of J. S. Mackenzie.)

Q. There have been no other purchases of timber except this Weyerhaeuser tract, have there?

A. No.

Q. And nothing else to increase the value of the property except such increase as would naturally follow from manufactured lumber over the raw timber.

A. The increase in the output; the increase in the machinery. You see in 1906 when they bought the plant the mill was cutting about 40,000 a day, and now it cuts about from 100,000 to 110,000.

Q. And in order to increase that equipment you took the [437] former profits of the mill and put it back into equipment. A. Yes.

Q. Now, when the timber is cut that mill property will be practically worthless, will it not?

A. It would be, without any more timber.

Q. When the timber that the Gold Bar Lumber Company now owns out there is cut, that property will be practically exhausted?

A. Unless they arrange to purchase more timber.

Q. They must purchase more timber in order to have the mill property and equipment up there of any value? A. Yes, sir.

Q. And in order to keep that mill going with the equipment that it has, how much timber should the company own? A. To keep it going right along?

Q. Well, to keep it running, we will say to run it a year, how much timber should it own in order to keep that mill going with the equipment that it has, for a year? A. Well, we cut 18,000,000 a year.



(Deposition of J. S. Mackenzie.)

Q. That is your output?     A. Yes.

Q. And the timber now costs you how much, did you say?     A. That is to buy?

Q. Yes.     A. It can be bought from \$2.50 up.

Q. Well, timber adjacent to this mill?

A. \$2.50.

Q. And in such a neighborhood that it can be used at this mill? [438]

A. Well, I know of one tract in particular which can be bought for \$2.50 immediately adjacent to what we now own.

Q. How many feet of timber do you think that the Gold Bar Lumber Company now has out there?

A. About 70,000,000.

Q. And what do you figure necessary for the upkeep of that mill annually, when it is in operation?

A. The expenses of keeping it up?

Q. Well, to keep it equipped as it is now and in repair?

A. I do not know that I could arrive at that.

Q. You could not arrive at it?

A. No. That all depends on how much machinery we break up, and so forth.

Q. It is problematical?

A. Yes, sir, it would be—it would be impossible to arrive at it.

Redirect Examination.

Q. (Mr. McGINN.) Mr. Mackenzie, in the statement of October 1, 1907, the timber was carried at the valuation of a dollar and a half per thousand feet?     A. Yes.

(Deposition of J. S. Mackenzie.)

Q. Was that, in your opinion, a fair and reasonable estimate of the value of the timber?     A. No.

Q. How much do you think the timber was worth at that time, per thousand feet?

A. I should say it would be worth from \$2.00 to \$2.25.

Q. And the price per thousand feet was raised by the Gold Bar Lumber Company about that time, wasn't it?     [439]     A. Yes.

Q. Now, you say there is about 70,000,000 feet of timber on the property at the present time.

A. From actual cruise there is about 70,000,000.

Q. But that would run, as a matter of fact, about 121½ per cent greater?

A. Yes, sir, it should run about 80,000,000.

Q. Can you tell at this time what the amount of timber was in April, 1910?

A. Judging from these statements, October 1, 1909, shows 135,000,000, and October 1, 1910, shows 115,000,000. I should say that there would be 125,000,000 in April, 1910.

Q. Now, you say the mill depreciates about 10 per cent per annum?     A. Yes, sir.

Q. And after the timber is all cut off that property, provided that the Gold Bar Lumber Company did not purchase any more adjacent or near to it, the mill and the other property there could be sold for something, could it not?

A. The machinery and site, yes, could be sold. The buildings of course, would be no good.

Q. The mill itself?

(Deposition of J. S. Mackenzie.)

A. The mill itself—the machinery and site.

Q. Do you think it could be sold for 50 per cent of its present worth?     A. Yes, sir.

Q. On cross-examination you made the statement that the valuation placed upon the timber of \$204,-956.05, plus [440] 12½ per cent, would be a fair estimate of the value of the timber lands at that time; did you mean that?

A. No, I did not. I don't believe I stated that. What I did say was that 12½ per cent could be added to the amount shown on that statement on account of the difference between the actual cut and the cruise.

Q. Then on the top of that fifty cents per thousand feet, so as to arrive at a fair and just and reasonable valuation—

A. Yes, sir, at a fair valuation.

Q. Now, I asked you in regard to that statement of October 1, 1908, and of the values that were set forth there—the same values, approximately, existed in March of that same year, didn't they?

A. Yes; that is the year that the mill did not operate.

(Deposition of witness closed.)

[Endorsed]: Received. Clerk of the Court Office Apr. 20, 1914, Fairbanks, Alaska. Filed in the District Court, Territory of Alaska, 4th Div. Apr. 29, 1914. Angus McBride, Clerk. By P. R. Wagner, Deputy. [441]

By Mr. McGINN.—I now desire to read the deposition of M. W. Peterson. (Reads same.) [442]

**[Deposition of M. W. Peterson, for Defendants.]**

M. W. PETERSON, produced as a witness in behalf of defendants, being first duly cautioned and sworn, testifies as follows:

Q. (Mr. McGINN.) State your name.

A. Marshal W. Peterson.

Q. Where do you reside?

A. Seattle, Washington.

Q. How long have you resided there?

A. Sixteen years.

Q. And what is your occupation?

A. Cashier of the Dexter-Horton National Bank.

Q. Of Seattle, Washington?

A. Of Seattle, Washington.

Q. How long have you been cashier of that bank?

A. I do not recall; as nearly as I can remember I was in the bank two years before they officially made me cashier, though I had been filling that position from the time I arrived in Seattle.

Q. I will ask you to state whether or not you were the cashier of that bank in the month of March, 1908? A. I was.

Q. Are you acquainted with an institution known as the Fairbanks Banking Company? A. Yes.

Q. Of Fairbanks, Alaska? A. Yes.

Q. I will ask you to state whether or not you received any communication from them in March, 1908, relative to the value of the stock of the Gold Bar Lumber Company of Gold Bar, State of Washington? [443] A. Yes.

Q. What kind of a communication was that which

(Deposition of M. W. Peterson.)

you received at that time?

A. It was a telegram received from the bank.

Q. Did you reply to that telegram?     A. Yes.

Q. That is, the Dexter-Horton National Bank replied to it?     A. Yes, sir.

Q. I will show you a letter which is a copy of the original, and which is dated March 18, 1908, addressed to the Fairbanks Banking Company of Fairbanks, Alaska, and which is unsigned, and I will ask you to state whether or not that is a copy of a letter which was forwarded by the Dexter-Horton National Bank to the Fairbanks Banking Company of Fairbanks, Alaska (showing document to witness).

A. Yes, sir, this is the letter we sent them.

Q. And this letter purports to contain a copy of a telegram which was received by you from the Fairbanks Banking Company?     A. Yes, sir.

Q. And this telegram reads: "Please advise by telegraph at the earliest possibility last reliable report of valuation Gold Bar property. What is opinion of yourselves regarding the property. Wood will explain what we mean by Gold Bar property."

Mr. RIDER.—Is that regarding the property or regarding the report?

Mr. McGINN.—Regarding the property.

Mr. RIDER.—"What is opinion of yourselves regarding property"? [444]

Mr. McGINN.—"Regarding property."

Mr. RIDER.—My copy says "report."

Q. (Mr. McGINN.) In pursuance of the request



(Deposition of M. W. Peterson.)

contained in that telegram, what did you do, Mr. Peterson?

A. We got a report from the commercial agencies, from Dun's commercial agency and Bradstreet's, we got a report and then called upon several of the timber men and large sawmill owners in Seattle asking for their personal opinion in regard to it. There was no one in our bank had ever seen the property, other than to see it from a car window as we went by the property. And then we secured a report from Wood, and turned that over to our credit department to analyze the report and endeavor to substantiate the figures; and we arrived at the valuation that we set forth in that letter.

Q. This report was furnished you by Mr. Armstrong who was the then manager?

A. By Mr. Armstrong, the manager.

Q. And you say you made independent inquiries of timbermen and sawmill men who were acquainted with the property?     A. Yes, sir.

Q. Do you know what particular persons you made inquiries of at that time?

A. I recall two or three. Charles E. Patton—

Q. Who is Charles E. Patton?

A. The president of the Atlas Lumber Company, one of our leading citizens in Seattle.

Q. He is a timber man of some experience?

A. Yes, sir, of many years' experience.

Q. And was he acquainted with this particular property? [445]

A. Yes, sir. At one time he had endeavored to

(Deposition of M. W. Peterson.)

buy the property, hoping to get a location on the Great Northern Railway, as his present mill is on the Northern Pacific Railway, and that would bring him into a different territory there, and he was quite familiar with it. And C. A. Bean of the Canyon Lumber Company of Everett.

Q. And is he also a lumber man of experience?

A. Yes, sir, he has the biggest mill on Puget Sound.

Q. And was he acquainted also with this property?

A. Yes, sir, he knew the property. And D. W. Bass.

Q. Is he a timber man also?

A. No, he is a lawyer and he is now manager of the Frye Hotel—he married into the Frye family—but he had been into that country and had cruised this land and he had more personal knowledge of the property than any one else we talked with.

Q. Did he and Patton operate together?

A. They were very close friends, and I think they had mutual interests.

Q. Were they not negotiating about that time, or prior to the time that Captain Barnette purchased the property, were they not looking after it?

A. It is my impression that they endeavored to buy it from Captain Barnette, or just about the time that Barnette got into it. As I say, they were wanting to get a mill on the Great Northern Railway.

Q. Now, from the investigation which you made at that time what, in your opinion, was the reason-

(Deposition of M. W. Peterson.)

able fair market value of the Gold Bar property?

(Counsel for plaintiff objects as irrelevant, [446] immaterial and incompetent.)

A. Well, the sale of a piece of property is just a bargain. It is worth all you can get for it. But these men that we talked with at that time, they knew the circumstances under which we were holding the property and that all we cared for and all we expected for it was \$400,000, for although they were trying to buy it themselves, they said they were looking for a bargain. Every one of them referred to it as being a magnificent property.

Mr. RIDER.—I move to strike out the answer of the witness for the reason that the same is incompetent and based upon no proper basis of value and not the proper method of determining the value of property, and purely speculative, and is merely information that is based upon pure speculation.

Q. (Mr. McGINN.) In the letter and telegram which you sent to the Fairbanks Banking Company in response to their telegram you state that you believe it could be sold for more than \$425,000.

A. Yes.

Q. You considered that at that time a conservative estimate of the value of that property.

(Counsel for plaintiff objects as irrelevant, immaterial and incompetent in its form.)

A. Yes.

Q. Who owns the Gold Bar Lumber Company at the present time?

A. The Dexter-Horton National Bank owns four-

(Deposition of M. W. Peterson.)

fifths of the capital stock and Carl M. Johanson owns one-fifth of the capital stock.

Q. Are you acquainted with the value of timber in the [447] immediate vicinity of the Gold Bar Lumber Company's property, as to what it is being held for?

A. It is being held for \$3.50 per thousand and it is very hard to buy any at that price. The only basis on which a trade can be made is that we must purchase some timber elsewhere adjoining on the Stimson tracts in some other part of the county. They do not want to decrease their present holdings of timber. They are willing to sell if we replace it somewhere else—if we replace it with timber adjacent to some other parts of their timber, but they are only willing to trade on the basis of \$3.50 per thousand, that is they were about three years ago.

Q. Do you know what they were holding timber for about March, 1908?

A. I think that matter came up, but I cannot recall it now, I could not say under oath.

Q. Do you know what they were holding it for, say in April, 1910, in the immediate vicinity of Gold Bar?

(Counsel for plaintiff objects as irrelevant, immaterial and incompetent.)

A. Their price right along has been \$3.50, but how far back it was when we first got that price, I could not say.

Q. What would you place the value of the timber per thousand upon the property at the present time

(Deposition of M. W. Peterson.)

—on the Gold Bar Lumber Company's property?

(Counsel for plaintiff objects as irrelevant, immaterial and incompetent.)

A. In selling that property I simply got back a claim that the bank has— [448]

Mr. RIDER.—I object to that and move to strike it out as not responsive to the question.

Q. (Mr. McGINN.) I am asking you at what you place the value of the timber per thousand upon the Gold Bar Lumber Company's property at the present time?

A. We have not placed any fixed value on it.

Q. What would you regard as a fair valuation per thousand feet for the timber upon the property?

(Counsel for plaintiff objects as irrelevant, immaterial and incompetent.)

A. We put a value on the whole property, and not on the timber alone.

Q. What valuation did you put on the entire property?

(Counsel for plaintiff objects as irrelevant, immaterial and incompetent.)

A. \$300,000.

Q. \$300,000? A. Yes, sir.

Q. That is, at the present time?

A. At the present time, yes, sir.

Q. Had it a greater value in 1908?

A. Yes, sir; there has been a great deal of timber cut off the land since then.

Q. Had it a greater value in 1910, say in April, 1910? A. Yes.



(Deposition of M. W. Peterson.)

Q. Now, you say that you placed that value on it; do you mean by that that you would not sell it for less than that?

(Counsel for plaintiff objects as irrelevant, immaterial and incompetent.)

A. It is the duty of the bank to get its loans back, and we [449] won't carry that property as a speculation for the bank. We have, as you know, certain duties, and it is our duty to clean up our debts just as fast as we can, and we would sell that property for much less than what it is worth in order to get our money out of it. We do not want to go into the sawmill business and run a manufacturing plant up there, which we would have to do if we keep it.

Q. If you were to keep it don't you regard that it would be of greater value than \$300,000 for manufacturing?

(Counsel for plaintiff objects as irrelevant, immaterial and incompetent.)

A. In the hands of a mill man it is very valuable property, but in the hands of a bank it is not so valuable, for the reason that people know that we are holding it against our will, and it is a pretty hard proposition for us to trade it off, but if we continue in the manufacturing business we could probably make it pay us away beyond the amount of our claim.

Q. Are you acquainted with Carl M. Johanson?

A. Yes, sir.

Q. Are you acquainted with his signature (showing document to witness)?

(Deposition of M. W. Peterson.)

A. I should say that was his signature.

Q. I will ask you to state whether or not that communication was received by the Dexter-Horton National Bank from Carl M. Johanson?

A. I could not say whether we ever got that letter or not. It is addressed to Mr. Parsons. It undoubtedly was received by us, but I cannot say that I ever saw it before. [450] I think the original of these letters are up in Valdez. They were subpoenaed when Mr. Rathbun was up there as a witness and I think they were introduced, and some of them have the filing marks on them.

Mr. MCGINN.—I will ask to introduce this in evidence, and ask that it be copied into the record at this place.

Mr. RIDER.—To which offer the plaintiff objects as irrelevant, immaterial and incompetent.

(The above document is received in evidence, marked Defendants' Exhibit "No. 6," attached hereto and returned herewith, and the same is read into the record as follows:)

(On letterhead Gold Bar Lumber Co.)

"Seattle, Washington, Oct. 13, 1913.

Mr. W. H. Parsons,  
Seattle, Wash.

Dear Sir:—

Enclosed find the general report of operation at the mill for September. While the profits show small, I think it is fairly good considering the present condition of the lumber market. The extension of our logging railroad has cost us considerable

(Deposition of M. W. Peterson.)

money the last two months, but it had to be done before the bad weather set in, in order to get the best results for the least money, but from now on, we will not have this drain on us and will be able to reduce our bank obligation still further—the present month, the 30th of September was our yearly date for closing books for the preceding year, and we charged off the bad accounts and depreciated some of the items in order to be within a reasonable figure of their actual worth. The depreciation was something like \$40,000 and I enclose a statement of resources and liabilities after the depreciation has been made. The only item showing an undervaluation is the timber, which on the old cruise shows a little over 72 millions, but as our old cruise has overrun about 15% we undoubtedly have about 80 to 85 million feet of standing timber left.

Yours very truly,

CARL M. JOHANSON."

Q. (Mr. McGINN.) Here is a statement of the resources and liabilities of the Gold Bar Lumber Company, dated [451] September 30, 1913, which shows net resources September 30, 1913, \$344,941.92; I will ask you to state whether or not, in your opinion, that was about correct?

(Counsel for plaintiff objects as irrelevant, immaterial and incompetent.)

A. I can only say that we are led to believe that that was a fair valuation for that property. We will know more about it when we have had it thoroughly surveyed and gone over by our own men.

(Deposition of M. W. Peterson.)

Q. Mr. Johanson was in charge of the property at that time.

A. Yes, and we have every confidence in his judgment in the matter.

Q. And he is a man of some experience in the timber business?     A. Yes.

Q. And is conservative in his estimates?

A. We find the mill is a very much better piece of property than we had any idea of. We thought it was one of those mills which would saw a piece of timber one inch thick at one end and two inches thick at the other; that the machinery was all out of line, but Mr. Smith and Mr. Kerry have been up there and gone through the mill and they found the mill is really the best part of the property.

Q. (Mr. RIDER.) Are you testifying about a matter which you have personal knowledge of or what Mr. Kerry and Mr. Smith reported to you?

A. They reported it to our board of directors.

Mr. RIDER.—I move to strike out the answer for the reason that it is incompetent, and based upon hearsay evidence entirely.

Q. (Mr. McGINN.) I show you what purports to be a statement [452] of the Gold Bar Lumber Company, showing the net resources on October 1, 1909, and I will ask you to state whether that statement was received by you from the Gold Bar Lumber Company, and also one of October 1, 1910, and I will ask you to state whether those reports were received by you from the Gold Bar Lumber Company. (Showing.)     A. Yes,

(Deposition of M. W. Peterson.)

Q. That is a copy of the originals which you received?     A. Yes.

Mr. McGINN.—I offer these in evidence.

Mr. RIDER.—Plaintiff objects to their reception in evidence for the reason that they are incompetent, irrelevant and immaterial.

(Documents received, marked Defendants' Exhibits "No. 7" and "No. 8," attached hereto and returned herewith.)

Cross-examination.

Q. (Mr. RIDER.) Mr. Peterson, the letter to which your attention was called from your bank, in answer to the telegram to which your attention was called, is dated March 18, 1908, is it not (showing)?

A. Yes.

Mr. RIDER.—Did you offer that in evidence, Mr. McGinn?

Mr. McGINN.—I will do so now.

(Copy of a letter and telegram above referred to is received in evidence, marked Defendants' Exhibit "No. 5," attached hereto and returned herewith.)

Q. (Mr. RIDER.) How long, in the ordinary course of mail, would it take a letter mailed from here in March, 1908, [453] to reach Fairbanks, Alaska?

A. I have not any idea. I don't know.

Q. Your bank carried on considerable communications by mail with the Fairbanks Banking Company at that time, didn't it?

A. Yes, but there is no schedule of mails ever perfected where you could depend on getting a letter in



(Deposition of M. W. Peterson.)

there in ten or twenty days or two months.

Q. It never takes shorter than two weeks, does it?

A. Hardly, to Fairbanks.

Q. Your bank also replied to the Fairbanks Banking Company by telegram, didn't you?

A. Yes, sir.

Q. What is the date of that telegram?

A. There is no date. It says, "We have therefore telegraphed to you as follows"—

Q. Never mind reading it—what was the date of it?

A. There is no date on it.

Q. The only information you have is from the telegram copied in your letter.

A. We have other copies in the bank.

Q. I mean, your present information?

A. Yes, right here.

Q. Did you write that letter which has been identified as exhibit No. 5?

A. I am not positive whether Mr. Spangler or I dictated the letter. I evidently signed it. I see my stamp is on there.

Q. And the telegram referred to in your letter was that prepared by you or with your knowledge?

A. Yes, sir; it was with my knowledge and consent, but whether [454] I actually held the pencil and wrote the telegram, I cannot say.

Q. That telegram was sent on the same day the letter was prepared?

A. I presume so, I could not say without I first saw the copy.

Q. You would not be able to identify the date from

(Deposition of M. W. Peterson.)

the copy of the telegram which I hand you (showing)  
—the telegram was sent in cipher, was it not?

A. Partly, I think.

Q. Can you identify that paper which I now hand you as the telegram with the translation at the bottom (showing)?

A. Yes, that would be the telegram.

Q. Now, that copy which I hand you bears date of March 18th?     A. Yes.

Q. Does that help you to remember the date?

A. No, no. That is farther back than my memory goes.

Q. Now, you say that as a part of your basis for that report embodied in this telegram and the letter, was the report made to you by Mr. Wood?

A. Mr. Wood.

Q. Yes, didn't you?     A. No.

Q. Didn't you say you secured a report from Mr. Wood in addition to reports from Dun's and Bradstreet's and parties who were engaged in the lumber business?

A. That is the report which Mr. Armstrong—the company's report—I think it was brought in by Mr. Wood and Mr. Armstrong together.

Q. It was the Armstrong report, then, which you referred to. [455]

A. Yes; it is referred to as the Wood report.

Q. Did you know a broker here, or who was engaged here at that time, by the name of O. W. Brown?

A. There was such a firm as that in Seattle.

(Deposition of M. W. Peterson.)

Q. Did you communicate with him?

A. We sent our credit manager—

Q. Who was that?      A. Mr. J. W. Spangler.

Q. Did you send him to Mr. O. W. Brown at the suggestion of Mr. Wood?

A. I think Mr. Wood gave us the names of two or three persons who were more or less familiar with the property and thought it might aid us in making our investigation.

Q. Do you remember whether Mr. Brown was one of those persons or not?

A. I thought I had that name on a slip of paper—wasn't that O. W. Brown and some other person?

Q. You got in touch with O. W. Brown, then, through Mr. Wood?

A. I don't know where we got the name from, but I have a firm of that name on a slip of paper.

Q. And you sent your credit man to communicate with Mr. Brown before you sent that telegram and letter.

A. I can't swear as to that; it was about the same time we looked into it.

Q. You did not make any investigation after you sent the telegram and letter, did you?

A. We continued our investigations for a number of months, as the stock of that company was in and out of our bank as collateral, and naturally we wanted, for our own benefit, to find out about what it was worth. [456]

Q. Do you remember whether or not Mr. Brown was referred to you by Mr. Wood for your exclusive

(Deposition of M. W. Peterson.)

information in reference to this matter?

A. I cannot say.

Q. In your letter and telegram of March 18 you state that in your opinion the property is worth \$375,000 for a firm basis of credit, didn't you?

A. Yes.

Q. Now, do you remember the receipt by your bank in the month of August, 1908, of a telegram from the Fairbanks Banking Company asking you to extend credit upon this Gold Bar stock?

A. I do not recall the incident.

Q. I hand you what purports to be a copy of a telegram dated August 27, 1908, addressed to the Dexter-Horton National Bank and signed by the Fairbanks Banking Company, and I will ask you if you can identify it as a telegram received by your bank. (Showing document to witness.)

Mr. McGINN.—To which we object as irrelevant, immaterial and incompetent and as having nothing to do with the issues of this case and not cross-examination. A. Yes, we got that telegram.

Mr. RIDER.—I would like to have that marked for identification as “exhibit A” to the deposition of M. W. Peterson.

(Document marked as above and returned to counsel for plaintiff.)

Q. In answer to that telegram of August 27, did you not, as the cashier of the Dexter-Horton National Bank, reply by letter dated August 31.

Mr. McGINN.—We will admit that there was a letter sent, but we object to it on the grounds already stated [457]

(Deposition of M. W. Peterson.)

Mr. RIDER.—I show you the letter (showing).

A. Yes, sir, that is my letter.

Mr. RIDER.—I will ask you to have this letter marked “Identification B to the deposition of W. M. Peterson.”

(Document marked as above and returned to counsel for plaintiff.)

Q. Now, I hand you what purports to be a copy of a letter signed by you as cashier, and addressed to the Fairbanks Banking Company, dated September 4, 1908, and I will ask you whether you can identify it as the copy of a letter which you wrote to the Fairbanks Banking Company on that day (showing).

Counsel for defendants interposes the same objection.)

A. Yes, sir.

Q. That is your letter, is it?      A. Yes, sir.

Mr. RIDER.—I will ask to have that marked for identification as “exhibit ‘C’ to the deposition of M. W. Peterson.”

(Document marked as above and returned to counsel for plaintiff.)

Mr. RIDER.—The plaintiff now offers in evidence the letters marked for identification as exhibits “A,” “B,” and “C” to the deposition of M. W. Peterson, stating that in such cases as he can he will supply the originals at the trial.

Mr. McGINN.—To which we object on the ground that the same are irrelevant, immaterial, incompetent and not pertinent to any of the issues in the



(Deposition of M. W. Peterson.)

case and not proper cross-examination.

Q. (Mr. RIDER.) Now, Mr. Peterson, in this telegram of August 27, which has been marked for identification as exhibit "A" the bank asked you what amount of credit you could extend for the winter on Gold Bar, and in your letter of August [458] 31 you refer to a telegram from you dated September 5 stating that you will advise later concerning Gold Bar, which telegram is copied in identification B; you can identify that telegram, can you, from the copy contained in your letter—it is right at the top of the letter (showing).

Mr. McGINN.—It is understood that our objection runs to all this testimony.

Mr. RIDER.—Yes.

The WITNESS.—Yes, that is the telegram at the top of the letter.

Q. Now, in the letter of August 31, you state, in reference to their telegram asking that Gold Bar be taken as collateral, "that Mr. Spangler in charge of our credit department will go to Gold Bar some time this week and make a thorough examination of the mill property and endeavor to ascertain the exact condition of the company. We cannot tell whether we wish to take the stock of the company or not. At the present time the lumber industry is at a standstill; practically no business being transacted." Why, was it necessary, Mr. Peterson, to have Mr. Spangler make this investigation at this time when you had made such a thorough investigation in the March preceding?

(Deposition of M. W. Peterson.)

A. In every large loan that we make where we are liable to fall heir to the security, we take every precaution, and in this case we had a credit department and a man in charge of it and we might as well use him, and I do not recall what his report was unless it appears later among these papers, I do not recall what his report was.

Q. But you stated in March that it had a firm basis of [459] credit for \$375,000? A. Yes, sir.

Q. There had been nothing occurred to depreciate the credit of that stock, had there?

A. They may have sold their timber land; they may have gone into debt. We wanted to put a man right on their books to see whether they still were the holders of these valuable timber lands.

Q. Hadn't you done that in March?

A. Yes, but you could get rid of it all in two minutes with a good lawyer to draw your deeds.

Q. But the records would show that?

A. Yes, but we did not have the records in our office.

Q. You would have to go to their office to examine the records?

A. We would have to go to their office and to look in their ledgers to find out what their own books showed.

Q. And you did that for the purpose of advising yourself as to whether they still owned the property which they owned in March? A. Yes, sir.

Q. And that was the purpose of Mr. Spangler's investigation? A. Yes.

(Deposition of M. W. Peterson.)

Q. If, as a result of your investigation, it had been found that they still owned the property, then you would have accepted Gold Bar as collateral for this loan?

A. We had other collaterals at this time.

Q. Well, would you have accepted Gold Bar?

A. Not by itself, no. We wanted some notes of merchants.

Q. You did not accept it, then, did you? [460]

A. No, I don't recall that we did until a later date.

Q. In your letter of September 4th, marked as exhibit "C," you use this language: "In one of our previous telegrams you asked us what advances we would make against the stock of the Gold Bar Lumber Company. We have not yet finished our investigation and have not fully determined what our course will be, but from present indications will be unable to accept the stock as security for advances"—but it still had that firm basis of credit for \$375,000.

A. Yes, but in October, 1907, we had the panic in this country and stocks in all the sawmills were about the poorest collaterals a bank could take and particularly with the chances that the panic would be prolonged and it might cause disaster to many of these little companies engaged in the sawmill business.

Q. That was in October, 1907? A. Yes, sir.

Q. And prior to the date of your report in March, 1908? A. Yes, sir.

Q. And the operation and the effect of that panic

(Deposition of M. W. Peterson.)

upon Gold Bar was just as apparent in March, 1908, as it was in September, 1908, was it not?

A. Well, the first blow of a panic is the easiest thing to get over. After that you slowly bleed to death from a panic. We wanted to sit back and see how the general finances throughout the country were going to adjust themselves to the situation.

Q. Had there been any change by September, 1908?

A. Well, the situation was much clearer at that time. [461]

Q. And based upon the financial situation then, Gold Bar would be more acceptable in September than in March? A. Possibly.

Q. As far as any effect caused by the panic was concerned? A. Possibly.

Q. Well, wouldn't it?

A. Yes, sir. Our deposits were rather steady, although they shrunk some, and in the face of the panic we did not care to make big loans, and we did not care to make a loan of any kind.

Q. I am asking you now about the effect of the panic upon Gold Bar stock as a security; it would be more acceptable, Gold Bar stock would be more acceptable in September, 1908, than it would in March, 1908, so far as the influence of the panic of October, 1907, affected it.

A. No, I would not say that it would be more acceptable, because for instance we had a panic in 1903, but in 1907 the conditions were worse than they were in 1903.

(Deposition of M. W. Peterson.)

Q. Were they worse in September, 1908, than they were in March, 1908?

A. The people were not making any new investments at that time.

Q. That is not what I asked you. My question is whether the conditions were any worse in September, 1908, than they were in March, 1908?

A. Well, I cannot recall what the interest rates in September, 1908, were.

Q. Now, knowing the effect of that panic of 1907, upon the stocks of the character of Gold Bar, why did you report to the bank that Gold Bar in March, 1908, had a firm basis of [462] credit for \$375,000 when you would not accept it at all for credit in September, 1908?

A. Well, possibly there were outside conditions that would prevent us from making a loan of that size. A \$250,000 loan is a big loan for any bank to make, especially for a bank that is a thousand miles away from us, in a country where communications were very hard.

Q. Were there such outside conditions—you say that possibly there were?

A. Undoubtedly there were conditions like that. We did not like to make loans to banks in Alaska; such loans are not gilt-edge and we approach them with a great deal of hesitation.

Q. You were just as careful in reporting to them in March on the valuation of this property as you would have been if you were at that time making a loan upon it, were you not?



(Deposition of M. W. Peterson.)

A. Well, we used our best endeavors to make a correct report on the property.

Q. You did not intend the deceive them.

A. We had no interest in it whatever.

Q. I say you did not intend to deceive them?

A. Certainly not; how could we gain anything by deceiving them.

Q. And you reported it as having a firm basis of credit for that amount at that time?     A. Yes.

Q. And it lost that between that time and September, didn't it?

A. Well, we did not want to make the loan for the bank, that [463] was all.

Q. As a matter of fact, Mr. Peterson, your report of March, 1908, was based entirely upon the report of the condition of Gold Bar as shown by Mr. Armstrong's itemized statement, together with a copy of the trial balances of that day, wasn't it?

A. No. Our report was gathered from information that we got from that report and the report from Dun's and Bradstreet's and from personal interviews with parties like Patton and Bean and I think two other persons whose names were given to us, I don't know by whom now, O. W. Brown and some other person.

Q. How far did O. W. Brown's report influence you?     A. I do not recall.

Q. It had considerable influence, did it?

A. I do not recall—I do not recall what information we got from him.

Q. Now, you say that you are now the owners of

(Deposition of M. W. Peterson.)

four-fifths of that stock. You base that ownership upon the fact that your bank bid in the stock at the foreclosure proceedings recently had, don't you?

A. Yes.

Q. And an appeal has been taken from the decision foreclosing your lien, has it not? A. No, sir.

Q. Well, notice has been served of one.

A. They have the regular ninety days in which to perfect an appeal.

Q. Well, notice has been served of an appeal.

A. Well, not to my knowledge. [464]

Q. An it was served prior to the time your bank bought it?

A. We know that they have the privilege of appealing that case.

Q. Don't you know that that notice was served on your bank prior to the time that your bank bought it, at the time that the foreclosure sale was on?

A. I can't say; I did not ask the lawyers about that.

Q. You bid in that stock for \$100,000, didn't you?

(Counsel for defendants objects as irrelevant, immaterial and incompetent.)

A. I think that was the price we paid.

Q. Were there any other bidders besides your bank? A. No.

Q. Did that cover the entire indebtedness of the Washington-Alaska Bank to your bank, as established by the decree of foreclosure.

(Counsel for defendants interposes the same objection.)

(Deposition of M. W. Peterson.)

A. No.

Q. This property you say is worth \$300,000 at this time?

A. Yes, we believe it to be worth about that.

Q. Yet you only bid \$100,000 on it when you had a claim being foreclosed and reduced to a judgment in a sum in excess of \$100,000?      A. Yes.

Q. You feel, then, that you have received on that sale property worth \$300,000.

A. Yes, we believe that—that is an interest in the property worth that much.

Q. Well, you have got a four-fifths interest in the property, [465] worth that much?

A. Yes, worth \$300,000.

Q. And therefore you have received property more in value than the amount of your judgment?

A. Yes.

Q. Do you still assert a claim against the bank for the deficiency between your judgment and the \$100,000?

(Counsel for defendants objects as irrelevant, immaterial and incompetent.)

A. Yes, sir, we do.

Q. Do you know anything about an option to purchase this property being given last summer?

A. No, sir.

Q. You do not know anything about that?

A. No.

Q. Or that the option was refused—you do not know anything about that?      A. No.

Q. I would like to have you just state altogether,

(Deposition of M. W. Peterson.)

Mr. Peterson, your reasons why this stock was not considered by you as good for security for an advancement in September, 1908, if it had had a firm basis of credit for \$375,000 on March 18, 1908.

Mr. McGINN.—That is objected to on the ground that it assumes something which has not been testified by the witness and that is that it did not have the same firm basis in September, 1908, as it had in March, 1908.

Q. (Mr. RIDER.) Then I will ask you if it did have the same firm basis of credit in September, 1908, that it had in March? [466]

A. I believe it had.

Q. Then, why did not you accept it as security?

A. Because we had loaned them all that they were entitled to receive on other securities, and this was simply piling up another loan on what we had already loaned them.

Q. Did you give them that reason?

A. I do not recall whether they did or not, but they should have known it.

Q. And that is the reason you give it now ?

A. We had loaned them all the money we thought we were entitled to loan any one person.

Q. And that is the reason now for not making any advancement.

A. I just told you what our reason was.

Q. And that is the reason that you now give?

A. Yes.

Mr. RIDER.—That is all.

(Deposition of M. W. Peterson.)

Redirect Examination.

Q. (Mr. McGINN.) You also stated that conditions were such at that time that you did not care to make the loan?

A. Yes. We were practically carrying all the gold-dust that they had purchased and at one time we had nearly a million dollars in transit to them against a million dollars of gold-dust coming out, and on the top of that they asked us for more money, and regardless of what the security was it is a question whether we would make them such a loan.

Q. Although you thought that Gold Bar was a firm basis of credit for \$375,000, yet under the conditions that existed at that time you did not feel that you wanted to make the [467] loan?

A. Yes. I think that both of you gentlemen do not understand me—you misunderstand me. We did not say that we would loan them \$375,000 in March, 1908. We told them as a basis of credit we would consider the collateral worth that much, but we never loan the full amount of what a thing is worth. If they turned in a lot of collateral to us we would have said the estimated value of Gold Bar stock was \$375,000; but our loans at that time were based on notes and other securities that they deposited with a trustee that we had in Fairbanks, Mr. R. H. Miller, and Miller kept us constantly advised of the quantity of security that he had on hand and we made the loans in accordance with it.

Q. This O. W. Brown do you know whether he was a timber cruiser?      A. I cannot recall him.



(Deposition of M. W. Peterson.)

Q. Do you know whether or not he is the man that made the cruise of this country for E. T. Barnette and Mr. Johanson prior to the time they purchased it?

A. I cannot recall anything about him, except that I have his name. I cannot recall anything concerning him.

(Deposition of witness closed.)

[Endorsed]: Received Clerk of the Court Office, Apr. 20, 1914, Fairbanks, Alaska. Filed in the District Court, Territory of Alaska, 4th Div. Apr. 20, 1914. Angus McBride, Clerk. By P. R. Wagner, Deputy. [468]

Mr. McGINN.—I desire to introduce in evidence that portion of the Articles of Incorporation of the Fairbanks Banking Company, a copy of which was filed for record with the clerk of the United States District Court, Third Division, of the District of Alaska, on March 24, 1909, which is as follows (Reads):

“That the purposes for which said corporation is formed are as follows: To carry on a general banking business wholly without the State of Nevada, and in connection therewith to discount bills, notes and other evidences of debt, receive and pay out deposits with and without interest, receive on special deposit money or bullion or foreign coin, stocks and other securities; to buy and sell foreign and domestic exchange, notes and other negotiable paper; to loan money on percentage, security and bonds, pledges of bonds or other negotiable securities; to take and

(Deposition of M. W. Peterson.)

receive security by mortgage or otherwise upon property, real and personal; to invest money for individuals or corporations; to buy and sell gold and silver bullion, foreign coin, stocks, bonds, and all other property, real and personal; and to do any business and exercise any powers incident to the banking business or necessary or proper to the furtherance and attainment of the purposes above set forth." That is section 3.

Mr. McGINN.—We also desire to read from the statement that was filed with the clerk of the court upon March 24, 1909, as follows:

Mr. RIDER.—We object to reading from the statement, as the bank-books [469] are here and are the best evidence.

The COURT.—What is the purpose?

Mr. McGINN.—To show what we held out that the capital stock was. (Reads.) Under "resources": "Treasury stock \$126,400." Under "Liabilities": "Capital stock \$300,000." And from the statement filed by the bank in the office of the clerk of the District Court of the Territory of Alaska, Fourth Division, September 22, 1909, being a report required to be filed by statute—

Mr. RIDER.—The same objection as to that. (Overruled.)

Mr. McGINN.—(Reads.) "Amount of the capital stock of said corporation \$300,000. The amount of its capital stock actually paid in money is \$172,600." Then from the statement of September 10, 1910— Referring again to the statement filed March

24, 1909, the "Amount of the capital stock of said corporation is \$300,000. The amount of its capital stock actually paid in money is \$173,600." Now, I read from the report of September 10, 1910, filed with the clerk on September 23, 1910 (Reads):

"The amount of capital stock of said corporation is \$300,000. The amount of its capital stock actually paid in in money is \$169,600." [470]

Trial Eighth Day.

April 30, 1914, 10 A. M.

Mr. McGINN.—I have not quite finished with Mr. Stewart, but Mr. Wood and Mr. Hill are working on the statement, so I will read the deposition of Mr. W. H. Parsons. (Reads deposition.) [471]

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**[Deposition of W. H. Parsons, for Defendants.]**

W. H. PARSONS, produced as a witness in behalf of defendants, being first duly cautioned and sworn, testifies as follows:

Q. (Mr. McGINN.) State your name.

A. W. H. Parsons.

Q. Where do you reside? A. Seattle.

Q. How long have you lived in Seattle?

A. About five years.

Q. Prior to residing in Seattle where did you live?

A. Fairbanks, Alaska.

Q. When did you go to Alaska or the Yukon Territory? A. To the Yukon Territory in 1898.

Q. Where did you go to? A. Dawson.

Q. How long did you live in Dawson?

A. About five years, I should say.

Q. And from Dawson where did you go?

(Deposition of W. H. Parsons.)

A. I came back to Seattle.

Q. And from Seattle?

A. To Fairbanks, Alaska.

Q. Did you engage in business in Fairbanks, Alaska?     A. I did.

Q. What business?     A. In the banking business.

Q. What was the name of the bank?

A. The Washington-Alaska Bank of Fairbanks.

Q. State whether or not you were one of the stockholders of that institution.     A. I was. [472]

Q. That is the Washington-Alaska Bank, incorporated under the laws of the State of Washington?

A. Of the State of Washington.

Q. Who were associated as stockholders with you in that bank?

A. Mr. Falcon Joslin, Mr. E. L. Webster, Mr. John Schram and the Washington Securities Company.

Q. You engaged in the banking business there?

A. General banking business.

Q. What time did you start that bank?

A. In the spring of 1905.

Q. What position did you occupy in the bank?

A. Manager.

Q. Were you vice-president?     A. No.

Q. Just manager?     A. Manager.

Q. How long did you continue to manage that bank?     A. Until the fall of 1909.

Q. And what happened then?

A. We sold the bank.

Q. To whom?

A. To the stockholders of the Fairbanks Banking Company.

(Deposition of W. H. Parsons.)

Q. Sold it to the corporation?

A. To the corporation.

Q. Who did you carry on your negotiations with in regard to the sale?

A. With E. T. Barnette and Mr. Dusenbury, I think principally.

Q. I will ask you to state whether or not before the Fairbanks Banking Company purchased the Washington-Alaska Bank of [473] Washington, Captain Barnette and Mr. Dusenbury went over the loans and discounts and resources and liabilities of the bank. A. They did.

Q. How long a period did your negotiations cover?

A. I should say fully three weeks, probably longer, I cannot recall now.

Q. I will ask you to state whether or not they made a careful scrutiny of the loans and discounts of the bank? A. They certainly did.

Q. How long have you known Captain Barnette?

A. During the time that I lived in Fairbanks.

Q. And he had been engaged in the banking business during all that time himself? A. He had.

Q. How long had you known Mr. Dusenbury?

A. I should say approximately the same length of time.

Q. He had also been engaged in the banking business? A. Yes.

Q. In the employ of the Fairbanks Banking Company? A. Yes, sir.

Q. I will ask you to state if you know whether Captain Barnette was familiar with the standing and



(Deposition of W. H. Parsons.)

credit of the people in that community and the mining ground?

A. He was certainly supposed to be; he was in the banking business and also a large operator I believe, as well.

Q. For what amount did you sell the Washington-Alaska Bank of Washington to the Fairbanks Banking Company? A. \$250,000. [474]

Q. I will ask you to state whether or not in your opinion that was a fair value for the stock of the Washington-Alaska Bank of Washington?

Mr. RIDER.—I object to that as irrelevant, immaterial and incompetent.

A. Yes, sir, I certainly do think it was the fair value.

Q. (Mr. McGINN.) What do you base that estimate on?

A. Well, on the book value of the institution, as well as the earning power.

Q. Do you remember about what the book value of the Washington-Alaska Bank was at the time of the sale to the Fairbanks Banking Company?

A. Something over \$200,000, if I remember correctly.

Q. Something like \$206,000?

A. In that neighborhood, yes.

Q. I will ask you to state whether or not in the book value you included the accrued interest on loans? A. No, we did not.

Q. What was the amount of the accrued interest?

A. We did not take into consideration the accrued

(Deposition of W. H. Parsons.)

interest unless the accrued interest had been paid.

Q. What was the amount of the accrued interest that was unpaid at the time you sold the Washington-Alaska Bank to the Fairbanks Banking Company?

A. I think it figured up something in the neighborhood of \$20,000.

Q. What was the amount of the paid up capital stock?     A. \$150,000.

Q. The surplus and undivided profits amounted to in the neighborhood of \$56,000.     [475]

A. As shown by the books.

Q. According to the books?     A. Yes.

Q. And in addition to that you say there was about \$20,000 of accrued interest that was not included.

A. Yes, as I remember it.

Q. In the book value?

A. It did not appear in our books, but the bank had earned that amount of additional interest.

Q. I will show you a statement which I will ask to be marked as exhibit No. 3 for the purpose of identification and which purports to be a statement of the condition of the Washington-Alaska Bank as of date September 13, 1909, and I will ask you to examine the same and to state, in your opinion, whether that states about what the condition of the bank was at that time. (Showing document to witness.)

Mr. RIDER.—I object to that as irrelevant, immaterial and incompetent and a mere guess on the part of the witness.

(Deposition of W. H. Parsons.)

A. To undertake to pass an opinion on the various items here would be impracticable and I could not do it. Taking the totals in general, they would occur to me as being approximately correct.

Q. (Mr. McGINN.) In this statement you were carrying securities to the amount of \$59,875.

A. Yes, sir.

Q. What stock did that include?

A. I should regard that item as including the stock of the First National Bank.

Q. That is, half the stock? [476]

A. I could not say, but it would include the stock of the First National Bank.

Q. That was owned by the Washington-Alaska Bank?

A. By the Washington-Alaska Bank, yes—I do not know whether it was half or not.

Q. You also have an item here of building and real estate on which is placed the valuation of \$17,536.23; what did that include?

A. That included the realty, the building, the bank building, the furniture and fixtures, the vaults and so forth.

Q. Where was that situated?

A. That was situated on the corner of Second and Cushman streets.

Q. You have stated that you have lived in Fairbanks five years. A. Yes, sir.

Q. And you have a pretty good idea of the value of town property in Fairbanks? A. Yes, sir.

Q. And particularly in the neighborhood of the

(Deposition of W. H. Parsons.)

Washington-Alaska Bank?      A. Yes, sir.

Q. I will ask you to state whether or not, in your opinion that was a reasonable estimate as to the value of that property?

A. We regarded it so when we bought the property and built the building.

Q. State whether or not it cost you, as a matter of fact, more than that.

(Counsel for plaintiff objects as irrelevant, [477] immaterial and incompetent.)

A. Yes, sir, it did.

Q. Do you remember about what the amount of your deposits was at that time?

A. To which time do you refer?

Q. At the time of the sale to the Fairbanks Banking Company.

A. If I recall correctly, somewhere in the neighborhood of \$1,900,000; it may have been a little more or a little less—somewhere in that neighborhood.

Q. Do you remember about what the amount of your loans and discounts was?

A. A little less than \$300,000, if I remember correctly.

Q. About what per cent of cash did you have on hand?

A. Do you mean cash or do you mean reserve—cash and exchange?

Q. Cash and exchange.

A. We had, at the time we sold, in excess of ninety per cent of cash and exchange.

Q. What do you mean by cash and exchange?

(Deposition of W. H. Parsons.)

A. I mean cash in our vaults and cash in other banks on the outside with our correspondents.

Q. What had been the earning capacity of that bank from the time of its organization in 1905 up to the time of the sale, each year, approximately?

(Counsel for plaintiff objects as irrelevant, immaterial and incompetent.)

A. Oh, I think our average earning power was somewhere in the neighborhood of \$50,000 a year.

Q. This statement shows that upon the 13th day of September 1909, that the loans and discounts amounted to the sum [478] of \$258,545.35, that is about correct?

A. That is taken from the books at that time?

Q. At that time. A. Then it must be correct.

Q. And what would those loans and discounts consist of?

A. Loans and discounts consist of loans and discounts.

Q. I know, but what was the nature of the loans?

A. To sundry and various people, merchants, miners and professional men.

Q. Such as the bank generally keeps? A. Yes.

Q. It is charged in the complaint in this case that at the time of the sale of the Washington-Alaska Bank of Alaska to the Fairbanks Banking Company, that there was in the neighborhood of \$70,040.10 of loans past due and which were and still are without any substantial value, a list of which I have in my possession and concerning which I am going to interrogate you. Now there is a loan of \$125 to O. M.



(Deposition of W. H. Parsons.)

Anderson et al—

A. Pardon me for interrupting you, but do you intend to interrogate me upon all of the names which would compose this \$75,000 of notes that were not paid?

Q. Yes.

A. Well, I will answer it to the best of my ability.

Q. That is all we expect. There is a loan of \$125 to O. M. Anderson et al.—that is O. M. Anderson and W. M. Anderson.

A. That is Oscar Anderson and W. M. Anderson the druggist?

Q. Yes. A. I remember that. [479]

Q. I will ask you to state whether that loan was good. A. At the time we sold?

Q. Yes.

A. We regarded it as absolutely good. They were druggists; they had a nice little stock of, I should say, about five or six thousand dollars, and stood well in the community and I should think they would be good for that amount of money.

Q. The next item is Colosimo, Christian, et al., which was due June 1, 1909, in the sum of \$6,223.75; how about that loan on the 13th day of September, 1909? A. Colosimo, Christian?

Q. Yes.

A. It would possibly be better to pass over that name temporarily and interrogate me on some others in the meantime.

Q. This is Colosimo, Christian, et al.—I think Christian was running a bootblack stand.

(Deposition of W. H. Parsons.)

A. Oh, yes, I remember them now. They were Italians?

Q. Yes. A. Yes, that was a secured loan.

Q. Secured how?

A. Secured on their property and on their plant.

Q. On what property, do you know?

A. If I remember, they had a claim on a tributary of Vault that they were working on.

Q. That was a mining claim, was it?

A. Yes, sir, a mining claim.

Q. And you had a mortgage on the mining claim?

A. We had a mortgage upon the mining claim and upon their [480] plants.

Q. Do you know what plant it was?

A. Well, I cannot recall now, but it was an adequate plant to operate their mine, probably a very substantial plant, if we loaned them that amount of money.

Q. Before lending money upon a mining claim what investigation did you make to determine the probable value of it?

A. Why, we always had employed by the bank men who were very conversant with prospecting and passing judgment upon mining claims. They were constantly in the employ of the bank. If there was an application for a loan and the ground was opened up we sent this expert out to go over it and pass upon the property.

Q. I will ask you to state whether or not on the 13th day of September, 1909, you felt that that was a good loan? A. Unquestionably we did.

(Deposition of W. H. Parsons.)

Q. It was due June 1, 1909, do you know why it was not collected at that time?

A. No, it would be impossible for me to tell you now. But, no doubt, there was some good and sufficient reason. They may have been troubled with water; they may not have been able to have operated in order to get the dumps out to wash them out—that very frequently occurs.

Q. Do you know what ever became of that plant?

A. No, I do not.

Q. The next item is Alex Erickson, due May 29, 1909, for \$16; do you remember that? A. No.

Q. The next item is Erickson & Company due May 7, 1909, for \$408; do you know anything about that? [481] A. That is Axel Erickson?

Q. Yes.

A. That used to be Erickson & Bostrom.

Q. No, I think there is another item down here later of Bostrom & Erickson.

A. I remember Bostrom & Erickson.

Q. You do not recall just now this particular item.

A. No, I don't know which Erickson that would be.

Q. The next item is Johnson, Cord et al. June 9, 1909, in the sum of \$310.

A. I don't remember Johnson & Cord—isn't that Gord?

Mr. RIDER.—I have it G-o-r-d in my list.

A. No, I don't remember.

Q. (Mr. McGINN.) The next item is Kellett & Monhman due May 24, 1909, in the sum of \$906.30, and there is also another item of Maddicks, Monhman

(Deposition of W. H. Parsons.)

& K., June 1, 1908, in the sum of \$648.99—how about those loans?

A. That is Maddicks, Monhman & Kellett.

Q. Yes.

A. They were always regarded by us as being first-class miners and splendid bank risks. We have loaned them in the past, I think the records will bear me out, as high as \$30,000 in their operations. Among other properties, they had a valuable lay on Cleary, Six Below I think was the property of Judge Kellogg, and they made a great deal of money out of that, and I know our substantial advances to them was on the basis of that property. We had a mortgage on their lease and also on their plants.

Q. Was the mortgage sufficient to cover these items? [482] A. I should say so.

Q. I mean the property that was included in the mortgage.

A. Yes, sir, I think that that claim produced over \$600,000, and they had a forty per cent lay.

Q. State whether or not at this particular time there was still a dump on that property which was not washed up.

A. I rather think that there was. I know that they had a dump there that they found a great deal of difficulty in washing, and they could not get the water—the water was taken from above them, and there was quite a little dump which was left there at the bottom, which is always supposed to be very good, and I rather think that if there was any amounts not paid up at that time, that that was the cause of it,

(Deposition of W. H. Parsons.)

that they had not washed their dump out. I am speaking now as nearly as I can remember from thinking back five years.

Q. The next item is T. R. Kovaich for the sum of \$829.50; do you remember that loan, Mr. Parsons?

A. What is the initials?

Q. T. R.      A. Is that Tom Kovaich?

Q. Yes.

A. Tom Kovaich is a miner on Lower Gold Stream; he had a fraction that laid aside of L. L. James' ground, Seventeen Below on Gold Stream. That was examined by our experts. He had the ground opened up and if I remember correctly I think that you will find that that was also secured.

Q. By a mortgage?

A. I think so. But I know that it was passed upon by one of our men. [483]

Q. That note was due July 24, 1909; do you remember why it was not collected at that time?

A. No, I do not. I cannot state.

Q. Do you know whether or not that property got into litigation after this loan?

A. Let me see. Was there not an overlapping there, or a contention on the hillside claims there? I can just recall something of that kind; I cannot recollect what it was, but there was some litigation down there. I will tell you what it was, come to think of it—it was the original staking and group staking over it—somebody went in and staked under an association claim over it—that came over and took a part of the bench. I remember now there was some



(Deposition of W. H. Parsons.)

litigation—whether the delay in payment was attributable to that I can't say, but there was some litigation.

Q. Do you know whether or not that litigation was settled?     A. No, I do not.

Q. There is a note of John Lappi et al., due June 1, 1909, in the sum of \$957.76; what do you know in regard to that?

A. John Lappi is a Swede with three partners, they operated a claim on lower Fairbanks creek. There were four of them, big, husky fellows, good miners, and the records will show that from time to time we have loaned them up probably as high as \$2,500. They had their own plant; they used to go out into the woods and cut their own wood, so that they did not have to buy that. They operated cheaply and they always made a little money. Their habit was to take out the winter dump and sluice it in the spring. They were not large operators. [484]

Q. Was that secured?

A. That was secured by their plant, as I remember, and whatever other chattels they may have had. I do not think they owned their ground; I think they had a lay there.

Q. Do you know why that note was not collected when it became due on June 1, 1909?

A. No, I cannot see the reason for it. There was evidently some good and sufficient reason if it was not paid.

Q. Most of those loans were made during the winter months?

(Deposition of W. H. Parsons.)

A. Yes, sir, during the winter months; that was the time when they needed assistance.

Q. And how did you fix the time the note became due?

A. Usually for the cleanup; that would be along about June or July 1st.

Q. And conditions might arise which would prevent them paying then.

A. There were instances where there would be a lack of water, or the water in some of the creeks had to be divided up; certain parties of miners would take it a certain month or a certain part of the season and then others would take it, and for sundry and various reasons they were carried over many times into the fall and sometimes into the following year before they were able to pay.

Q. State whether or not it was customary among the banks in Fairbanks at that time to hold paper overdue without having it renewed.

A. In some instances, yes.

Q. Why didn't you have the paper renewed in these particular cases I have enumerated? [485]

A. In many instances the notes were secured notes, either secured by a chattel or real mortgage, and in that instance we obviously would prefer to continue the old notes rather than to take new notes.

Q. Why?

A. Well, in that country during the interim of taking the new note, the mortgage would describe a specific note due at a specified time; now if we were to take a new note and for any reason there should

(Deposition of W. H. Parsons.)

be a transfer, that there should be a change in the records as regards the ownership of the property during that interim, it is just barely possible that there might be some change like that, and that would necessitate an abstract and looking it up, which was always expensive. We preferred to retain our original note. Then again, many times, a renewal of a note was not made because there would be an endorser and the endorser would be outside or he might be in the Iditarod or some other district.

Q. Did you consider the note of Lappi and those people for \$957.76, due on the 1st of June, 1909, as a good note on the 13th of September, 1909?

A. Yes, sir, we did, we surely did. I remember Mr. Lappi personally very well.

Q. The next item is H. I. Miller, a demand note, February 28, 1909, in the sum of \$1,546; what about that?

A. H. I. Miller was engaged in the stock business. He would go outside and buy a bunch of cattle and take them in and sell them; sell them to the miners, and he also did wholesale butcher business there. It was quite customary with us to loan Miller from time to time certain amounts, [486] in fact largely, probably up to \$2,500.

Q. He always paid?

A. Yes, sir, he always paid. I knew him also in the Dawson country. He was in the beef business there; I knew him for a number of years and he always went by the name of "Cow Miller" and he was very well regarded in that country, as well as

(Deposition of W. H. Parsons.)

the upper country. I knew that he always had a good credit with the Bank of British North America before he came down there.

Q. Did you consider he was a good risk?

A. Yes, sir, morally an A-1 risk.

Q. And did you consider his note perfectly good on September 13th?

A. It seems to me they ought to be able to collect that note against Miller to-day if they could locate him—he has property in Seattle, or he did have.

Q. The next item is a note of R. R. Myers in the sum of \$156.68 due August 26, 1909, what do you know about that?

A. Well, Dr. Myers is a dentist of Fairbanks and he always stood very high indeed, a very estimable fellow, and a man with a substantial practice. I should regard a loan of \$150 as being perfectly safe with him.

Q. He was a man of considerable earning capacity?

A. Yes, sir, at that time he had a very large practice.

Q. The next item is a note of M. Pamusianal et al., due June 9, 1909, in the sum of \$1,526.43, what have you to say about that?

A. I cannot remember that name, possibly if you had some of the other names I might locate it.  
[487]

Q. We will pass that—the next item is Seebe & Myers, due August 24, 1909, in the sum of \$4,658.49, what do you know about that?

(Deposition of W. H. Parsons.)

A. Harry Seebe and Dr. Myers?

Q. Yes.

A. Harry Seebe did business almost from the first day that our bank opened, with us. I think he had as high as fifteen and eighteen thousand dollars to his credit in our books—a very conservative careful worker. He went into a mining proposition on Little Eldorado in conjunction with Dr. Myers, and they put on a very nice plant and had the ground well opened up. We had that well examined by our man and he passed favorably upon it. We made the loan to Myers & Seebe and regarded it as a splendidly good loan at that time. They were very slow in getting that ground opened up. It was awful deep, and there was a slide came down, I remember, and cut the pay off from them, and I know that for a long time there they had a great deal of difficulty in locating it, because of this slide.

Q. Seebe stood well in the community?

A. Oh, yes, very well.

Q. A good moral risk also?      A. Splendid.

Q. In lending money there, what things did you generally take into consideration?

A. How's that?

Q. What things did you generally take into consideration in lending money?

A. Well, it is pretty hard to tell just exactly what you [488] would base your opinion upon in lending money. Certainly it would be your security and the moral risk, as you knew the party, and general sizing up of the situation, as to the enterprise they



(Deposition of W. H. Parsons.)

were going into and how you regarded their ability to succeed in that particular enterprise. Certainly you would want to know that the moral risk was pretty good even though you had the security.

Q. I suppose you would lend large sums of money up there to men without any security at all?

A. Oh, absolutely.

Q. You loaned money to men who really had nothing?

Mr. RIDER.—That is objected to as irrelevant and immaterial.

A. I would not put it just like that.

Q. (Mr. McGINN.) Well, I mean a man who had no tangible property, which would be subject to execution.

A. Very many times, for instance, there would be a man if we knew he was a sober, industrious, hard-working fellow and that he had a position or a claim that he was getting five or six or seven dollars a day and temporarily he needed a little assistance, or had a good job, his earning capacity was certainly the basis for a certain amount of credit.

Q. The next item is Smith, Lord & Hickman, a note due May 15, 1909, in the sum of \$1,209.36.

A. George Smith?

Q. Yes.

A. Well, that loan you will find is secured by their property, I think it is on the right limit of Esther Creek—no, I guess it was the left limit—however I would not be positive as to that. It was secured by property of [489] Mr. George Smith and Fisher.

(Deposition of W. H. Parsons.)

Q. This is not Smith and Fisher? A. Isn't it?

Q. This is Smith, Lord & Hickman?

A. Well, that would be a little different. George Smith would own the property in this instance and the firm of Hickman, Smith & Lord took a lease upon it—he took a lease with them on his own property—that was it. The basis of the value of that loan would be very largely attributable to Mr. Smith, who owned the property and who was regarded as being very well to do at that time.

Q. You considered that loan absolutely good on the 13th day of September, 1909?

A. Yes, sir, we did.

Q. George Smith has taken out considerable money up there since, didn't he?

(Counsel for plaintiff objects as irrelevant, immaterial and incompetent.)

A. No, I don't know that he did.

Q. On Eva Creek?

A. No, I don't know that. He had property in there, but I didn't know that.

Q. The next item is Mrs. J. A. Williams, note due October 3, 1909, in the sum of \$104, what do you know about that?

A. Well, that is J. A. Williams, that used to be in Dawson; his wife—I imagine that is J. A. Williams—was that a secured loan?

Q. I don't know. I will not bother with it because it was subsequent to September 13, 1909. The next item is J. A. Williams dated May 24, 1907, in the sum of \$3,307.83? [490]

(Deposition of W. H. Parsons.)

A. Yes, sir, I remember J. A. Williams very well indeed. J. A. Williams was formerly from Dawson. He was one of the large stockholders in the Dawson Electric Light Plant and he came to Fairbanks after having sold his interest out there, and I know he had \$40,000 when he came to Fairbanks. When he arrived there he opened an account with our bank and I knew him in Dawson, and he went out on Dome Creek and purchased a lay there. That loan was made after he had invested, I should say, twenty or twenty-five thousand dollars of his money in opening the ground up and putting it in shape and putting wood on it, and putting plants on it and so forth. After having invested that twenty or twenty-five thousand dollars we made him from time to time certain advances, I do not remember what the total is, but you will find that that is also secured by his dumps, by his plants and I think seven or eight hundred cords of wood that he had on the place at that time. I think the records will show that.

Q. The next item is F. B. Walker due May 11, 1909, for the sum of \$1,000.

A. Yes, I remember Mr. Walker; I think you will find that that was also secured.

Q. Secured by what?

A. By his machinery; he had a lay on one of the creeks—he also owned some property down on the Chattineka, but as well as that he was working another lay—he had two different plants and I think our security covered both of them.

Q. Did you think the security was ample for the

(Deposition of W. H. Parsons.)

amount?     A. We so regarded it. [491]

Q. You considered that loan was absolutely good on the 13th day of September, 1909?

A. We did.

Q. The next item is T. E. Wooldridge, due July 23, 1909, in the sum of \$19, did you consider that note good?

A. I should say that Wooldridge ought to be good for \$19. Is he still living there?

Q. Still living there?

A. Why can't they collect that? I should think he would be good for \$19.

Q. The next item is W. M. Anderson, due May 29, 1909, in the sum of \$525—I guess that is Walter Anderson.     A. What is the amount?

Q. \$525.

A. Is that one of the Andersons, the druggists?

Q. What you have already said in regard to Walter Anderson will apply to that.

A. If that is the same Anderson.

Q. Yes, that is the same.     A. Yes.

Q. Then there is Bostrom & Erickson, due May 12, 1909, in the sum of \$2,925.92.

A. That was secured by their ground; they owned either Number One or Two Above on Fairbanks Creek, and on the two plants. They took out a great deal of money, and we have loaned them away, away in excess of that amount—I think we loaned Bostrom & Erickson up as high as \$10,000.

Q. And they always paid?

A. They always paid.

(Deposition of W. H. Parsons.)

Q. And you considered it good risk? [492]

A. Yes, sir.

Q. And you considered that loan was good upon the 13th day of September, 1909? A. Yes, sir.

Q. The next item is T. Jestland, due July 1, 1909, in the sum of \$600.

A. Jestland was a merchant down on Little Eldorado; he had a little store down there.

Q. What kind of a store?

A. A general store, as I remember.

Q. Merchandise? A. Yes.

Q. Do you know whether that was secured or not?

A. I am not positive; I could not state positively.

Q. He had done business with you right along?

A. Yes.

Q. You considered that loan as absolutely good?

A. Yes.

Q. That is, I mean on September 13, 1909?

A. Yes, sir.

Q. The next item is Perrault & Rader, due June 4, 1909, in the sum of \$2,080.

A. That was a loan—that was made to Perrault & Rader—they were operators on Little Eldorado, and that was all secured by their plant, and their ground.

Q. They were both considered pretty good men?

A. Both splendid honest fellows and good workers.

Q. You considered that loan was good?

A. I did.

Q. At the time you sold to the Fairbanks Banking



(Deposition of W. H. Parsons.)

Company? [493] A. Yes.

Q. The next item is Al Morensy dated October 4, 1909, in the sum of \$2,886.82.

A. Al Morensy is a man that owns a lot of very valuable property. Al Morensy is a man—we have loaned him money—I don't know the amount that is there now, but he was a well-known character and had a lot of valuable property there.

Q. He had some valuable property in Fairbanks?

A. Yes, sir, some of the very best.

Q. He was considered absolutely good for that amount? A. Why should I so regard him?

Q. I mean at the time you sold to the Fairbanks Banking Company. A. Yes, sir.

Q. Then there is the item of Auten & Frich due September 13, 1909, in the sum of \$500.

A. I don't remember them.

Q. Don't you remember that George Auten and Frich were engaged in the saloon business there?

A. Oh, yes. I was thinking of miners—yes, I remember them—they were saloon-keepers.

Q. Do you know whether that was secured?

A. Yes, sir. I think that was—I think you will find that they had secured us by warehouse receipt on whisky in the Government warehouse of the United States.

Q. You held the certificates in your possession?

A. Yes, sir.

Q. You held the certificates of transfer, assigned to you as security? [494] A. Yes.

Q. And the security was ample to cover that

(Deposition of W. H. Parsons.)

amount?     A. We so regarded it.

Q. Well, whisky has a staple value.

A. A positive value, yes, and there was sufficient of it to make the collateral good.

Q. The next item is W. Sam Clark et al., in the sum of \$5,668.30, due May 15, 1908.

A. That was a loan that was made to the Clark brothers over both of their signatures, and was secured by their property on the right limit of Esther Creek. The loan was passed after our men had made the examination, after the men had got their holes down. They had located the pay above and below on the right limit, but they had a great deal of trouble in operating there because of the water. It was all underlaid there with springs and they had a great deal of difficulty in draining that off, but it was very rich ground; and I know positively at that time that the boys were offered \$20,000 for their claim.

Q. Do you know when that offer was made?

A. Well, that was within a year of the time that we sold—a year prior to that time.

Q. You considered that loan was absolutely good?

A. Yes indeed.

Q. With the security?     A. Yes, it was.

Q. The next item is Wiseman & Barclay, due May 30, 1909, in the sum of \$1,543.57.

A. Frank Wiseman, he was assistant United States marshal, I believe. [495]

Q. Deputy marshal.

A. Deputy marshal. He had earned in the neighborhood of three or four thousand dollars; I

(Deposition of W. H. Parsons.)

think he had that on deposit with us, and went into a mining venture on a tributary of Vault, and they invested this amount of money into the plant, and in opening up and buying his wood and so forth, and we loaned him this amount of money to complete the purchase price of his machinery and so forth, and I think you will find that we had a mortgage covering it.

Q. And the mortgage was upon property of sufficient value to pay the amount of the loan?

A. We considered it full.

Q. You considered that loan good on the 13th day of September, 1909?      A. We did.

Q. The next item is F. B. Walker and C. G. Walker, due June 11, 1909, in the sum of \$878.75.

A. That is the same Frank Walker and his brother that was on the other plant they were operating.

Q. Do you know where this plant was located?

A. That was on the Chattineka.

Q. A mining plant?      A. Yes, sir.

Q. Consisting of a boiler and hoist?

A. A boiler and hoist and so forth.

Q. Did you consider that of value sufficient to secure the loan?

A. Yes, sir, it probably cost four or five times that.

Q. Do you know whatever became of that plant? [496]      A. No.

Q. Do you think you could have collected that note if you had remained in there?

(Counsel for plaintiff objects as irrelevant, im-

(Deposition of W. H. Parsons.)

material and incompetent.)

A. It would certainly look reasonable to expect that I could.

Q. Now, there is an item of Garvin, Andy, due June 2, 1909, in the sum of \$111.97, and another of Garvin, Simonson and others due June 1, 1909, in the sum of \$6,717.34; how about that?

A. I remember that loan very distinctly. There was an association claim down on the Chattineka and Garvin was a part owner of this association claim. The boys had several thousand dollars to their credit and they bought a plant from the Northern Commercial Company; I think they paid in the neighborhood of \$12,000 for the plant; they also bought, with their own money, a lot of wood and put it on the property. We took a mortgage upon the plant and upon the wood and upon the mine itself to secure that note, and we also had our expert go out and examine that ground before we made the loan.

Q. Did you consider that absolutely good on the 13th day of September, 1909?

A. We certainly did.

Q. The next item is William Himes due June 1, 1909, in the sum of \$126.90.

A. William Himes was a freighter; he also had a piece of mining property on Fairbanks Creek, but he depended very largely upon the freight he hauled; he made that his [497] business, between the creeks and Fairbanks. He had two or three teams and was a very responsible fellow and a very

(Deposition of W. H. Parsons.)

skilful fellow. I cannot remember the particulars now in regard to that loan, but I know the man.

Q. You considered him worth \$126.90?

A. I certainly did.

Q. You considered him good for that at any time?

A. I should say so.

Q. The next item is James Kelly, due June 1, 1909, in the sum of \$4,928.24.

A. That was a loan that was also secured by mining property—the lease and mining machinery.

Q. And did you think the property was of sufficient value to secure the loan?

A. We certainly did or we would not have made the loan.

Q. The next item is A. H. McNeer, dated June 5, 1909, in the sum of \$726.56. A. Who?

Q. A. H. McNeer—Arthur McNeer.

A. He was the wood man. I think you will find that loan was secured by cordwood.

Q. Do you know how many cords?

A. I could not tell you now; but the way that loan was made it was secured by cordwood.

Q. Ample security? A. Yes, it was at the time.

Q. And the security was in existence on the 13th day of September, 1909?

A. I presume that it was. We had a mortgage covering it.

Q. The note was due January 5, 1909—do you know why it was [498] not collected at that time?

A. No, I cannot tell you why, but probably he was unable to deliver this wood. He would sell it to the



(Deposition of W. H. Parsons.)

creeks, you know, and have to take it out there, and probably he could not deliver it at that time on account of the roads or something.

Q. Then there is Peterson—Nels Peterson, administrator, that was due May 24, 1909, in the sum of \$2,943.25.

A. That is Nels Peterson, administrator?

Q. Yes.

A. Well, Nels Peterson and his partner had borrowed at various times from the bank sums of money up to four or five thousand dollars. His partner died and Nels was named administrator and handled the property for the estate, and in making this loan that bore the signatures of Nels Peterson, and as administrator, and was secured by the plants and the mining property.

Q. You considered that loan good on the 13th day of September, 1909?

A. I regarded it so at that time. He was administrator for his partner.

Q. Adolph Rippa, due June 1, 1909, in the sum of \$3,766.66.

A. Adolph Rippa was a miner on Fairbanks Creek. He was regarded as one of the best miners and one of the best moral risks in the camp. He was a good miner and had made considerable money mining. We have loaned him up as high as \$15,000.

Q. You considered him good on the 13th day of September, 1909?

A. We considered him at that time as A-1.

Q. The next item is Smith & Fisher, dated May

(Deposition of W. H. Parsons.)

18, 1909, in the [499] sum of \$940.

A. Is that George Smith?

Q. George Smith.

A. Well, that would be loaned on the strength of George Smith's signature.

Q. And on the property that George Smith had on Esther Creek? A. Yes, on Esther Creek.

Q. J. F. Struthers, due August 16, 1909, in the sum of \$208.

A. Well, that loan I remember distinctly, because there was an assignment of a premium or of a dividend from a life insurance policy; that was assigned to us and sent outside for collection.

Q. Was the dividend sufficient to cover that?

A. Yes, the dividend was in excess of the amount he owed us. That ought to be easily checked up through the collection department. It is very peculiar that that has not paid itself there. I have lost track of the item, but I remember it distinctly because I made the loan to him and took the assignment of the policy myself. As a matter of fact, Struthers is living right here now; you can get the full particulars of that.

Q. Struthers is worth that amount today?

A. He is running a mill down here at Orillia, saw-mill.

Q. The next item is the Tanana Trading Company, due June 1, 1908, in the sum of \$2,175.82.

A. The Tanana Trading Company was a company operating a general merchandise store at Chena, Alaska. We gave them a line of credit on, up I

(Deposition of W. H. Parsons.)

should say to ten or fifteen thousand dollars, as I remember it. [500]

Q. They were always considered good?

A. We so regarded them. They had a good credit and did a nice business there.

Q. The next item is J. A. Williams, due May 1, 1909, for the sum of \$150, which I think was secured by a ring; do you recall that? A. No, I do not.

Q. Now, at this time you carried those loans that I have mentioned upon the books of the bank as an asset. A. We did.

Q. And you so regarded them? A. Yes, sir.

Q. What was your custom in regard to wiping out a bad debt?

A. Usually once a year, on the first of January, if there was any paper that we had in our files that we did not regard as being good, that would be the time we would charge it off.

Cross-examination.

Q. (Mr. RIDER.) How long had you been connected with the Washington-Alaska Bank prior to the time that it sold to the Fairbanks Banking Company?

A. From 1905, in April, until we sold, September, 1909.

Q. A little over five years? A. Yes.

Q. It had been your custom each year on January 1st to charge off certain bad notes?

A. If we so felt that there was any paper to be charged off.

Q. Do you remember whether you felt that way

(Deposition of W. H. Parsons.)

at any time or not? [501]

A. Yes, sir, and we charged it off.

Q. Do you remember whether you charged off any on the first day of January, 1909?

A. I cannot recall.

Q. Do you remember whether you charged off any on the first day of January, 1908?

A. I don't think there was a year went by that we did not charge something off.

Q. You think every year you charged some off?

A. Yes, I think so.

Q. Then, by the middle of September, 1909, there were, in all probability there would have been some accumulations of bad notes which would be charged off on the succeeding January, would there not?

A. If we so regarded the paper we would charge it off.

Q. In the ordinary course of business you found each year that there was some bad paper, didn't you?

A. I think almost without exception every year.

Q. So that it would be reasonable to suppose that there would be some bad paper in the bank on September 13, 1909?

A. Well, we would not suppose it—if we found it we would charge it off at that time.

Q. Had there been any difference in the management of the bank during the year 1909 than any other year, respecting the making of loans?

A. No.

Q. Who supervised the making of the loans?

(Deposition of W. H. Parsons.)

A. I did very largely.

Q. You passed on the securities? [502]

A. Usually. Mr. Barbour, the cashier, also had the same authority. He usually passed upon them also—they were passed upon by myself and him jointly, or separately, as the case may be.

Q. Now, you stated that the loan to W. M. Anderson for \$125 was a perfectly good loan?

A. I so regarded it at that time.

Q. Why was it that you did not collect that perfectly good loan and that it had not been collected up to the time that you sold, and you allowed it to become past due for over two years?

A. There would be probably some good and sufficient reason for not having collected it.

Q. Can you give me the good and sufficient reason?

A. I cannot at this moment give you the reason.

Q. You are just guessing that there was a reason because you did not collect it.

A. It may have been there was an endorser upon that note, or it may be that the interest had been kept up and we carried it that way for a matter of convenience.

Q. And it may be that it was not collectible?

A. How?

Q. I say it may be that it was not collectible.

A. There is always a question of doubt about paper.

Q. After it becomes past due.

A. Not necessarily, but I always considered that



(Deposition of W. H. Parsons.)

it makes no difference in the value of paper because it becomes past due.

Q. It is just as good?

A. Absolutely, in instances. [503]

Q. As a banker, would you take any paper that is past due the same as paper that is not past due?

A. We have paper that is past due in our office to-day.

Q. Would you accept it as a purchaser just as readily as paper that was not past due?

A. For rediscount we would not take it at all, but many times from the customers, for convenience sake, we would take a note that was past due.

Q. Do you think that if you were purchasing a note that you would purchase a past due note as readily as you would one that was not past due?

A. No, sir, not in rediscounting I would not purchase the note, but a note that was made in the first instance with us for a consideration—there may be sundry and various reasons why we would carry that past due note and be perfectly satisfied with it.

Q. But you would not consider it a marketable note, would you, from the standpoint of a purchaser?

A. Well, if it bore any indorsements I would say that it would be just as good.

Q. You think it is just as marketable as if it was not past due?

A. I should think, in a general way, yes, if it was a secured note.

Q. And as a purchaser you would take it just as readily as one which was not past due?

(Deposition of W. H. Parsons.)

A. Possibly not as readily.

Q. You would not take it at all, would you, Mr. Parsons?     A. As a purchaser?

Q. Yes. [504]     A. Oh, I might.

Q. You might?     A. Yes.

Q. You would, as a purchaser, just as readily take \$70,000 of paper that was past due?

A. It would depend upon the class of paper, and it would depend upon whether the paper was secured or not.

Q. You know, from your experience as a banker, that past due paper is considered as dishonored paper by a purchaser, is it not?     A. No, sir.

Q. Not considered so in banking circles?

A. No, sir, not necessarily so.

Q. By a purchaser, I am speaking of—not by the owner who holds it, but by a purchaser.

A. Not necessarily; not where it is part of a going business.

Q. Where the note is part of a going business, you mean?

A. No; where the note is a part, as a unit of the whole business.

Q. Do not purchasers of bank stock generally require that past due paper be charged off, or be held by the bank?     A. A purchaser of bank stock?

Q. Well, yes.     A. No, not necessarily so.

Q. If you were purchasing the entire stock of a bank, would you not, as a banker, require that the owners of that stock retain this past due paper, or else charge it off?     A. Not necessarily.

(Deposition of W. H. Parsons.)

Q. Well, what do you mean by "not necessarily."

A. Why, because I am answering your question perfect there. I mean [505] that I would not say so because—I will give you an instance. When the Washington Trust Company and the Dexter-Horton Bank unified there was paper in the Dexter-Horton Bank and there was paper in the Washington Trust Company that was past due, but it was good paper and it was acceptable.

Q. They were practically the one bank before they unified.

A. In no sense of the word. They were separate corporations entirely.

Q. Owned by separate stockholders?

A. Separate stockholders.

Q. And which purchased the other?

A. It was a unification.

Q. The same stockholders combined, did they?

A. The same stockholders combined.

Q. And the same stockholders held the stock in the new bank?      A. Yes.

Q. It was not, then, any stranger coming into the bank?

A. Well, there were two interests that came together.

Q. But there was no stranger came into the bank?

A. There was a complete examination of the assets of both banks by the opposite institution.

Q. There was no stranger coming into the bank?

A. What do you mean by "stranger"?

Q. One who had not formerly been a stockholder.

(Deposition of W. H. Parsons.)

A. Well, it was the unification, and it would naturally be the stockholders of the two institutions coming together.

Q. But if you were purchasing the stock in the bank, or purchasing the control of a bank in which you had no interest at all, would you accept past due paper of that [506] bank?

A. I might be perfectly willing to.

Q. Why do you use the word "might" so much?

A. Suppose that the notes, or some of them, were secured notes, and supposing that for some reason they did not care to renew those notes for that purpose, but supposing there was an endorser upon the paper or a portion of that paper which you could not gain at that time, I would certainly take the note as I found it in preference to renewing the note without the indorsement.

Q. And for that reason only you would accept past due paper.

A. I merely gave you an instance.

Q. It is only in some instances where it might destroy the integrity of some security, do I understand you to say?

A. That would be a sufficient reason.

Q. Well, would that be the only reason?

A. I don't think it would be the only reason.

Q. That is substantially the only reason you have given so far.

A. I am not undertaking to give you a full category of all the reasons in banking.

Q. Have you many other reasons?

(Deposition of W. H. Parsons.)

A. I do not recall any more.

Q. You do not recall any more—then you have given the full category which you recall.

A. For the moment.

Q. Now, there was also a note of Maddicks, Monhman & Kellogg in the sum of \$648.99, which you say was perfectly good—that is correct, is it not?

A. I so regarded it at that time. [507]

Q. Why did you allow that perfectly good note to remain past due for fifteen months and a half without collecting it?

A. I think you will find that was an instance where the paper was secured.

Q. And you simply let that remain past due for fifteen months and a half because the paper was secured? A. Yes, sir.

Q. You did not collect your notes, then, if you had security?

A. We would not if the security was upon the man's machinery, and he had a good proposition; we would not foreclose it and take the machinery away from him.

Q. Why not?

A. We did not so regard it as being good business.

Q. Were you running the bank for the benefit of your borrowers? A. Not necessarily.

Q. Were you afraid that it would be pressing your borrowers a little to require them to pay their debts?

A. That might not be good judgment on my part, or good business acumen.

Q. Would it have been in this particular instance



(Deposition of W. H. Parsons.)

good business acumen?

A. I don't think so, or I would not have done it.

Q. Your attention was called also to a note of the Tanana *Trading* Company in the sum of \$2,175.82 which had been past due for fifteen months and a half; that is another one of those perfectly good notes, isn't it?

A. It was a note, I presume, which you will find that had an endorser upon it. I think in that particular instance [508] that could not be gained for a renewal.

Q. Your attention has not been called to any endorser either by Mr. McGinn or myself, has it?

A. I think you will find a particular instance of this.

Q. Unless that note had an endorser upon it, you would not consider it a perfectly good note?

A. I would not say that. I say you will find that it had an endorser upon it.

Q. Suppose you do not find it to be a fact, what would you think about the note?

A. At that time I would have regarded that note, without an endorser—

Q. (Interrupting.) —as a perfectly good note?

A. I should think so.

Q. Was the Tanana Trading Company a corporation or a partnership?

A. I think it was a corporation.

Q. Why didn't you collect it, then?

A. It is difficult for me to say at this time why I did not collect it. Because of probably some good

(Deposition of W. H. Parsons.)

and sufficient reason.

Q. Probably, you say?     A. Yes.

Q. And there might not have been.

A. There might not have been what?

Q. A good and sufficient reason.

A. I should say obviously that there was a reason.

Q. But do you not recall what that reason was?

A. No.

Q. You assume that there was a reason merely because the [509] note was not collected.

A. I should say so, knowing the people.

Q. I say, that is the basis of your assumption, is it not?     A. How is that?

Q. Merely because the note was not paid, you assume that there was a reason for it.

A. Knowing the people as we knew them, and the volume of business we did with them, I should say there was some really good reason why it was not renewed.

Q. Another perfectly good note in the sum of \$3,307, given by J. A. Williams, which was past due over twenty-eight months—now, why was not that note collected?

A. I think you will find in the same instance that that was a note that was secured by collateral.

Q. You did not press a man if he had security, then?     A. If we thought best not to, we did not.

Q. If a borrower of your bank placed security with you at the time he made the loan two and a half or three years ago, you would just let him go, then, did you?

(Deposition of W. H. Parsons.)

A. I would, if I thought it was the part of wisdom.

Q. The security in this instance was mining machinery, was it not?     A. In some instances, yes.

Q. Would that security depreciate any in two or three years?

A. I would say all machinery would depreciate in time.

Q. Well, it depreciates in two or three years, too, doesn't it?     A. It must depreciate some each year.

Q. And in that length of time, you would probably know the value of the mining claim, too, would you not?     A. Not necessarily. [510]

Q. Well, you would be pretty likely to, would you not?     A. No.

Q. You would not have any idea?

A. I would have an idea, but many times those operators have worked two or three years before they get their ground opened up.

Q. And might it not be that the reason you did not collect these notes was because the mining claim on which you had loaned it, turned out to be worthless?

A. Not necessarily so.

Q. That is not necessarily so, but it might be the reason?     A. Anything might be.

Q. Well, you are indulging in a good many suppositions in explaining that it might be—are you not—now, another perfectly good note to which your attention was called was that of W. Sam Clark and others which had been past due for sixteen months in the sum of \$5,668; why didn't you collect that perfectly good note?

(Deposition of W. H. Parsons.)

A. I think I gave you every explanation regarding that note.

Q. What was the explanation?

A. I stated that that was secured by their property on the right limit of Esther Creek; that the property had been opened up, and it had been prospected and the pay streak located on it; that it is property that they had been offered \$20,000 for. The pay was located above and below that. We had a first mortgage covering that property, and at that time regarded it as sufficient security.

Q. And you would rather have this loan on a chance, than have the money?

A. I would not say that. [511]

Q. I don't think your attention was called to a note of Heilig & Tozier in the sum of \$513—what would you say about that note?

A. I should say that was a perfectly good note.

Q. Another perfectly good note? A. Yes.

Q. That note, at the time when you sold to the Fairbanks Banking Company, had been past due twenty-three months—why didn't you collect it?

A. I can't understand why we would not have collected it. Mr. Heilig was our attorney. There was not any time that we did not owe him \$500.

Q. Cannot you give any reason for not collecting it? A. No, I cannot.

Q. As a matter of fact, would there not be some usury included in the principal of that note, and did not Mr. Heilig assert usury, subsequently when the note was attempted to be collected?

(Deposition of W. H. Parsons.)

A. Never to me.

Q. There were a good many of those notes that included usury, didn't they?

Mr. McGINN.—We object to that as irrelevant and immaterial to the issues involved in this case, and I instruct the witness that he need not answer the question.

Mr. RIDER.—Do you decline to answer the question? A. What is the question?

Q. Was there not a considerable amount of usury included in the notes which your bank held, as a part of the principal of the note?

A. The legal rate in Alaska, I believe, was one per cent. [512] I have no doubt there are notes there that bore a rate of interest in excess of that.

Q. And when notes were renewed you added that usurious interest to the principal, and you made that part of the principal of the new note in a great many instances? A. I don't think that was the case.

Q. You don't think that ever occurred?

A. I say I don't think that was the custom.

Q. Did it ever occur? A. I do not recall.

Q. Is it not a fact that that was true as to the Heilig note?

A. I don't remember. I don't remember the note being contested.

Mr. McGINN.—That note has been paid.

Mr. RIDER.—It was not paid at the time you sold to the Fairbanks Banking Company and had not been paid for twenty-three months and I am trying to find out why the witness did not collect it.



(Deposition of W. H. Parsons.)

Q. Can you give me any reason?

A. Obviously, for a good and sufficient reason, why I regarded the note as perfectly good, and I suppose if we asked Mr. Heilig for payment, he would have paid it.

Q. But you did not trouble yourself to ask him?

A. I would not regard that as being the situation.

Q. Of these perfectly good notes which were past due, all the way from eight to twenty-eight months, there appears roughly to be a total of some \$13,000. Do you regard that as good banking?

A. Do I regard what? [513]

Q. Allowing those notes in that sum—

A. I must have so regarded it if I had permitted them to become past due.

Q. And you think that a purchaser of this stock used reasonable banking diligence when he passed those notes in that sum that have been past due all the way from eight to twenty-eight months, do you?

A. I do not regard the mere fact that a note is past due as necessarily blighting the collateral of that note materially.

Q. I am not asking you about that now.

A. Well, I am explaining it.

Q. You said that Mr. Dusenbury and Mr. Barnett carefully went over those notes?

A. Very carefully.

Q. And that you regarded those notes as being perfectly good and of this value, didn't you?

A. I do.

Q. Their face value?      A. I did.

(Deposition of W. H. Parsons.)

Q. You think that as a purchaser of the bank stock, Mr. Barnette and Mr. Dusenbury exercised reasonable diligence and reasonable care and circumspection in accepting this overdue paper, do you?

A. I regard that they did all that you say, and more—that they used good judgment and they got a splendid bargain.

Q. And you got a splendid bargain, too, didn't you, when you sold at that price?

A. I do not regard it as being so very splendid.

Q. Did you consider the bank worth more than \$250,000? [514]

A. I regarded it worth \$250,000.

Q. That is not what I am asking you—did you regard it worth more than \$250,000?

A. It was not a question as to my valuation or how high a valuation we put on it.

Q. You would not put any higher valuation than \$250,000 on it? A. I would not say that.

Q. Was Mr. Webster as familiar with those values as you? A. I think not.

Q. You think not? A. No.

Q. Were you eager to make this sale?

Q. Only as far as my health was concerned, personally.

Q. It was simply on account of your health that you sold? A. Very largely.

Q. You thought you were making a sacrifice in making the sale, did you?

A. I don't think I was getting more than it was worth, if that is what you mean.

(Deposition of W. H. Parsons.)

Q. You did not think you were getting more than it was worth?

A. No, no. If my health had not been poorly, I very much doubt that I would have cared to sell.

Q. And Mr. Webster did not want to sell at all?

A. Mr. Webster or Mr. Joslin, neither of them wanted to sell.

Q. But you induced them to make the sale?

A. I told them I did not care to remain in the country any longer. That my health would not permit it.

Q. Did you retain any of the stock of the bank after you made this sale? [515] A. No.

Q. None at all? A. No.

Q. Did you have control over any after that time?

A. I did not own any stock.

Q. You continued to act as a director, didn't you?

A. No.

Q. Are you sure of that?

A. Possibly I did temporarily, for a short time. I forget, it is so long ago.

Q. Didn't you act as a director for some considerable time, Mr. Parsons?

A. I don't think for any particular length of time.

Q. Didn't you act as a director up to as late as April, 1910?

A. For a short time after I came out I did represent them as a director out here, I think.

Q. And you had to have some stock to do that?

A. Yes, sir.

(Deposition of W. H. Parsons.)

Q. How much stock did you retain?

A. Well, I did not retain any of the original stock.

Q. Was there some more issued to you?

A. I think there was, yes.

Q. How much?

A. I don't remember—a qualifying share, I think it was.

Q. Who did you buy that from?

A. I do not recall now; I cannot remember.

Q. How much did you pay for it?

A. That I don't know.

Q. When did you buy it?

A. I could not tell you that. [516]

Q. Didn't you own more than one share?

A. I don't remember. It was a very nominal amount, sufficient to qualify, I guess.

Q. Do you remember whether you owned as much as five shares?     A. It may have been that amount.

Q. What were those shares worth, par value?

A. I presume the par value would be one hundred dollars.

Q. You cannot say whether you owned as many as five shares?

A. I do not remember what the amount was.

Q. You do not remember whom you bought any from at all?

A. No. The stock was sent to me from the interior.

Q. And you don't know how it came to be sent to you?     A. I do not.

(Deposition of W. H. Parsons.)

Q. Somebody just made you a present of it?

A. I imagine.

Q. Just a present?

A. They didn't make a present—they sent it out here as qualifying shares. I don't know what the consideration was.

Q. Why was it necessary to send you the qualifying shares?     A. How?

Q. I say, why was it necessary to send you the qualifying shares?

A. I presume to act as a director for a period.

Q. There were enough stockholders to make up the board of directors without retaining you?

A. Yes, but I don't think they had any one outside then at that time; they wanted a trustee—they wanted a quorum here to elect new officers or something, I forget the particulars now.

Q. So they just gave you five shares? [517]

A. I don't remember what the consideration was; it is five years ago.

Q. After those shares of stock had been transferred to you you gave an option back to the bank to repurchase them, didn't you?

A. I imagine I did, yes, sir.

Q. Don't you remember just whether you did or not?

A. No, I don't remember whether I did or not.

Q. Don't you remember on May 9, 1910, you gave an option to the bank to repurchase the five shares which you owned?



(Deposition of W. H. Parsons.)

A. I do not recall it, but I presume that I did if you have a record of it—I have not.

Q. And that was for what consideration, do you remember?     A. I don't remember.

Q. You don't remember?     A. No.

Q. The fact that you had sold your interest in the Washington-Alaska Bank to the Fairbanks Banking Company was kept secret for some time, wasn't it?

(Counsel for defendant objects as irrelevant, immaterial and incompetent.)

A. No, not kept secret.

Q. It was not made public, was it?

A. In what respect?

Q. Well, you know what making a matter public is, don't you?     A. Through the newspaper?

Q. Well, if that is your construction of the only way of making anything public.

A. When we left there we advertised in the papers, at least there was articles to the effect that we were leaving and [518] discontinuing our connection with the bank, both Mr. Barbour and myself, and going outside, and that *was I* going to associate myself with the Washington Trust Company.

Q. You advertised it through the papers, did you?

A. Yes.

Q. What papers did you advertise in?

A. I think that you will find it in the paper run by Mr. Thompson, I don't remember the paper.

Q. Notifying the public that you had severed your

(Deposition of W. H. Parsons.)

connection with the bank at all?

A. That I was leaving for the outside; that I would associate myself in future with the Washington Trust Company.

Q. And that your relations with the Washington-Alaska Bank were terminated?

A. I do not remember the exact wording of the article.

Q. You did not give that information, did you?

A. I do not recall just to what extent.

Q. Wasn't it understood that you were not to give that information?     A. No.

Q. And that the severance of your relations would be kept secret.

A. No, no, not to keep it secret, nothing of the kind.

Q. Did you and Captain Barnette undertake, after that time, or consider the organization of a bank composed of stockholders in Seattle and along the coast, which would purchase the stock of the three banks at Fairbanks?     A. No.

Q. No such proposition was ever considered by you?     [519]

A. No.

Q. Did you ever give any interview to the papers here in Seattle that such was your purpose?

A. No, sir.

Q. Was the fact of giving such interview discussed by you and Captain Barnette?

A. I don't know, I am sure—nothing that I had any connection with whatever.

(Deposition of W. H. Parsons.)

Q. Do you recall any consideration of such a matter?     A. No.

Q. Or the discussion of it?     A. No.

Q. And it ever being suggested to you?

A. No.

Q. Mr. Parsons, as a banker, when you expect to acquire the capital stock of another bank how do you go about it to inform yourself as to the value of that stock?

A. Go through the assets of the institution, and the liabilities.

Q. Well, is that all—just look them over?

A. Examine them.

Q. By examining them, what do you mean?

A. Go through them.

Q. Rejecting certain ones and accepting certain others, is that what you mean?

A. Going through and making an examination.

Q. Well, what do you do to advise yourself—how do you advise yourself what the stock is worth?

A. Exactly as I explained it, going through the assets and determining the value of the assets, in my opinion, [520] and the liabilities.

Q. How do you arrive at that valuation?

A. What do you mean “how do you arrive”?

Q. Don’t you know what I mean?     A. No.

Q. You don’t—well, suppose that some \$500,000 of notes were presented to you by the bank, how do you arrive at the valuation of those notes?

A. You go through the notes and look them up—

(Deposition of W. H. Parsons.)

look up the security and the moral risk back of those notes.

Q. And if you find any overdue, what do you do with them?     A. It would depend.

Q. That is all the answer that you want to make to that—"it would depend"?

A. Well, wouldn't it depend? You are asking a perfectly general question.

Q. You state that the book value of this bank was \$206,000 at the time it was sold to the Fairbanks Banking Company.

A. I think that was the figure.

Q. What was the other \$44,000—wind?

A. What do you mean?

Q. You sold it for \$250,000, didn't you?

A. Yes.

Q. What was back of that \$44,000 then?

A. Goodwill.

Q. What else?

A. \$20,000 of accrued interest that was not carried on the books.

Q. Anything else?

A. Goodwill, as I stated—earning power of the business and [521] of the institution.

Q. That is the goodwill, isn't it?     A. Yes, sir.

Q. Then the goodwill and the accrued interest was all there was back of this \$44,000?

A. That would be approximately it, yes, goodwill—the value of the business.

Q. And against that ought there not to be charged something for this overdue paper?     A. No, sir.

(Deposition of W. H. Parsons.)

Q. Absolutely nothing?

A. No, sir, in my opinion.

Q. Do you know why all of these perfectly good notes aggregating \$70,040.40, a list of which has been called to your attention by Mr. McGinn, were not collected by the Fairbanks Banking Company between the time that they took them over on September 13, 1909 and January 1, 1911, when the receivers were appointed?

A. No, I would be unable to tell you why they were not collected.

Q. No reason on earth for not collecting them, was there?

A. I can't say that; I cannot tell you the reason why they did not collect them.

Q. There is no reason that occurs to you?

A. It would seem to me that they should have been more successful than they had in their collections?

Q. They were all perfectly good, were they not?

A. I have given you my opinion.

Q. And that opinion was that they were all perfectly good, wasn't it—now don't you care to answer that? [522]

A. I have given you my opinion repeatedly and I have reiterated it.

Q. I believe you stated that the bank building, its real estate, its furniture, fixtures and vaults were worth \$17,536.23, being the amount they are carried at, on September, 1909, is that correct?

A. We so regarded it at that time.

Q. Did you return to Fairbanks at any time after



(Deposition of W. H. Parsons.)

you sold this bank stock?      A. No.

Q. You haven't kept yourself acquainted with the value of real estate then since you left Fairbanks?

A. I have paid no attention to it.

Q. You would know nothing about its value in April, 1910 then?      A. No.

Q. You say that the earning power of this bank was \$15,000 a year; did you declare dividends in that sum each year?

A. I could not say each year to that extent, but I would say in the aggregate of the years we were there it would amount to approximately that.

Q. For each year \$50,000 of dividends were declared, on an average?

A. Approximately. That you will understand, is just an estimate offhand.

Redirect.

Q. (Mr. McGINN.) The Washington-Alaska Bank of Washington was the leading bank in Fairbanks?      A. Yes.

Q. And had the largest deposits?

A. The largest deposits.

Q. And it handled more gold-dust than any other?

[523]      A. I think it did, yes.

(Deposition of witness closed.)

(Whereupon the further taking of depositions is adjourned until Monday, March 16, 1914 at the hour of 10:00 o'clock A. M.)

[Endorsed]: Received Clerk of the Court Office, Apr. 20, 1914, Fairbanks, Alaska. Filed in the District Court, Territory of Alaska, 4th Div. Apr. 20,

(Deposition of E. L. Webster.)

1914. Angus McBride, Clerk. By P. R. Wagner, Deputy. [524]

Mr. McGINN.—I will now read the deposition of Mr. E. L. Webster. (Reads deposition.) [525]

**[Deposition of E. L. Webster, for Defendants.]**

E. L. WEBSTER, produced as a witness in behalf of defendants, being first duly cautioned and sworn, testifies as follows:

Q. (Mr. McGINN.) State your name.

A. E. L. Webster.

Q. Where do you live? A. Seattle.

Q. How long have you resided in Seattle?

A. About six years.

Q. Prior to living in Seattle where did you live?

A. Well, I spent most of my time in Alaska. I did not live any place in particular.

Q. When did you first go to Alaska or the Yukon Territory? A. About 1899.

Q. You went to Dawson at that time?

A. Yes, sir.

Q. And you continued to live in Dawson and Alaska until up to a couple of years ago, more or less?

A. About four years ago I made my last trip up there.

Q. What is your business, Mr. Webster?

A. I am representing the New York Life.

Q. The New York Life Insurance Company?

A. The New York Life Insurance Company.

Q. How long have you represented them?

A. Sixteen years.

(Deposition of E. L. Webster.)

Q. And what position do you hold with them now?

A. I am manager for Alaska and the Yukon Territory now.

Q. Are you acquainted with an institution that is known as the Washington-Alaska Bank, a corporation of the State of Washington? [526]

A. Yes.

Q. Were you one of the original incorporators of that institution? A. Yes.

Q. It was engaged in banking in Fairbanks, Alaska? A. Yes.

Q. Are you acquainted with the value of that bank in the month of September, 1909? A. Yes, sir.

Q. I will ask you to state whether or not at that time you had negotiations, that is if the Washington-Alaska Bank had negotiations with the Fairbanks Banking Company with regard to the purchase by the Fairbanks Banking Company of the Washington-Alaska Bank. A. Yes, sir.

Q. By whom were those negotiations carried on, if you know, Mr. Webster?

A. I think Captain Barnette, but I know that the board of trustees of the Fairbanks Banking Company were in session daily at that time.

Q. That is, Captain Barnette representing the Fairbanks Banking Company. A. Yes, sir.

Q. And who represented the Washington-Alaska Bank?

A. Mr. Parsons, Mr. Joslin and myself.

Q. You finally agreed to sell the Washington-Alaska Bank to the Fairbanks Banking Company,

(Deposition of E. L. Webster.)

didn't you?      A. Yes.

Q. At what price?

A. Two hundred and fifty thousand. [527]

Q. Two hundred and fifty thousand dollars?

A. Yes.

Q. I will ask you to state whether or not, in your opinion, the Washington-Alaska Bank, a corporation of the State of Washington, was worth the sum of two hundred and fifty thousand dollars at the time of the sale and transfer to the Fairbanks Banking Company, a corporation?

Mr. RIDER.—That is objected to for the reason that the witness has not shown himself competent to give such testimony.

A. At that time I thought it was worth more than that.

Q. (Mr. McGINN.) More than the sum of two hundred and fifty thousand dollars?      A. Yes, sir.

Q. I will ask you to state whether or not you are acquainted with the resources and liabilities of the Washington-Alaska Bank at that time?

A. To a certain extent.

Q. You owned about how much of the stock?

A. A quarter.

Q. And Mr. Joslin owned a quarter?      A. Yes.

Q. And Mr. Parsons a quarter?      A. Yes.

Q. And Mr. Schram a quarter?

A. The Washington Trust Company and Mr. Schram a quarter.

Q. How much over the sum of two hundred and fifty thousand dollars did you think that the Wash-

(Deposition of E. L. Webster.)

ington-Alaska Bank of Washington was worth at that time?

A. I don't know that I thought of any particular figure. I just simply did not want to sell my interest for that. [528]

Q. Why?

A. Because on account of the profits that it had been making and on account of the very bright future as it looked to me at that time, of the institution.

Q. Do you remember what the deposits of the bank was at that time?

A. As I remember, about seventeen hundred thousand dollars.

Q. Do you remember about how much cash there was on hand?

A. I think seven or eight hundred—seven hundred thousand, or in the neighborhood of seven hundred thousand—possibly eight, I don't just remember that.

Q. How much had the bank been paying prior to the time of the sale, approximately I mean?

A. The profits had been running about fifty thousand dollars a year from the time that it was incorporated.

Q. I will ask you to state whether or not it was a well established business? A. Very well indeed.

Q. I will ask you to state whether or not it was the leading bank in Fairbanks at that time?

A. It was the leading bank.

Q. And it had the largest number of depositors?

A. It had the largest number of depositors.

Q. And the largest accounts?



(Deposition of E. L. Webster.)

A. And the largest accounts.

Q. I will ask you to state whether or not, in your opinion, an institution like the Washington-Alaska Bank, having the resources that it had at that time, taking, of course, into consideration its liabilities and the fact that for a period of about four years it had been declaring [529] a dividend of about fifty thousand dollars a year, having at that time in the neighborhood of seventeen hundred thousand dollars on deposit, and having the standing and the goodwill in the community that the Washington-Alaska Bank of Washington had at that time, was worth in your opinion the sum of two hundred and fifty thousand dollars.

Mr. RIDER.—That is objected to for the reason that the witness has not shown himself qualified to answer.

A. Well, I could answer that best by saying that I did not want to sell my interest at that price.

Q. You regarded your interest worth more than that.

A. I regarded my interest worth more than that.

Q. I wish you would go on and just state what opposition, if any, you made at that time to the sale.

Mr. RIDER.—I object to that as irrelevant, immaterial and incompetent.

A. It seems that Mr. Parsons had been negotiating with Captain Barnette and had received a telegram from the Washington Trust that they were willing to sell at two hundred and fifty thousand dollars, provided that the other stockholders were agreeable.

(Deposition of E. L. Webster.)

Mr. Parsons' health had been very bad for a year, possibly two years, and he felt that he had to leave. I had a number of talks with Mr. Parsons and a number of talks with Mr. Joslin. Mr. Joslin agreed with me that we ought not to sell, particularly if Parsons could stay, but finally agreed that if Parsons would not stay that he would sell; and after, possibly, two weeks of bartering backwards and forwards in that way, I agreed with the other three that I would [530] sell, but I never would have sold only that they all agreed—the other three had agreed.

Q. (Mr. McGINN.) You did not want to block the sale?

A. I did not want to block it, and keep Mr. Parsons away from getting outside, if he felt that it was absolutely necessary for him to do so.

Q. Was there any talk between you and Mr. Joslin at that time in regard to getting somebody else to take the management of the bank?

A. Yes, sir, we talked that over very carefully many times.

Q. Who did you figure on getting?

A. Well, we talked of Mr. Barbour.

Mr. RIDER.—This is all objected to as irrelevant, immaterial and incompetent.

A. (Continuing.) We talked of Mr. Barbour, Mr. Hawkins, and Mr. Findlaison of Dawson.

Q. (Mr. McGINN.) Connected with what bank?

A. With the Bank of British North America.

Q. What position did he occupy in it?

A. At that time he was the assistant manager and

(Deposition of E. L. Webster.)

later manager of the Bank of British North America.

Q. Do you know what investigation was made by the officers and directors of the Fairbanks Banking Company with regard to the assets and liabilities of the Washington-Alaska Bank of Washington, prior to the time of its purchase by the Fairbanks Banking Company?

A. I know that they did examine them very carefully for possibly a week or two.

Q. Do you know by whom that examination was carried on?

A. I would not say for sure. I know Captain Barnette was [531] always present and active. I rather think that Bert Jackson or Dusenbury—Dusenbury and Bert Jackson, possibly, were active in that examination. I know that they looked the books over carefully.

Q. At that time that is, upon the 15th day of September, 1909, the Washington-Alaska Bank was carrying the building and real estate in the sum of \$17,536.23; now state whether or not, in your opinion, that was a fair valuation upon that property.

Mr. RIDER.—I object to that for the reason that the witness has not shown himself qualified to answer.

A. I should think so.

Q. (Mr. McGINN.) You had spent considerable time in Fairbanks, had you not?

A. I had been there every year from the beginning of the camp.

Q. Were you acquainted with the values of real estate in the neighborhood of the Washington-Alaska

(Deposition of E. L. Webster.)

Bank of Washington?

A. Yes, sir. I owned a half interest, I think, right across—in the building across the street.

Q. And you feel as though you are competent to pass upon the fair and reasonable value of lots in the town of Fairbanks and in that neighborhood?

A. I should think so.

Q. You said that Mr. Joslin was reluctant to sell; that he was of the same opinion you were, in other words?

A. He was of the same opinion I was, provided Mr. Parsons would stay, or we could find a man of equal ability.

Q. Mr. Parsons had been actively in charge of the business [532] from its inception up to this time?

A. From the start.

Q. And, of course, he knew more about the details of the business than any other of the officers, directors or stockholders of the institution.

A. Yes, sir.

Cross-examination.

Q. (Mr. RIDER.) Mr. Webster, do you remember the amount of the capital stock of the Washington-Alaska Bank? A. At that time?

Q. Yes, sir. A. \$150,000.

Q. Were you living in Fairbanks at the time of the sale? A. Yes, sir.

Q. And were you in charge of the affairs of the Washington-Alaska Bank? A. No, sir.

Q. What business were you in at that time?

A. I was in the insurance business.

(Deposition of E. L. Webster.)

Q. You were not an officer in the Washington-Alaska Bank?    A. A trustee.

Q. You had a board of trustees which acted the same as a board of directors?

A. Yes, sir, or I was a director—you can call it either way.

Q. Did your board of directors frequently go over the assets and liabilities of the Washington-Alaska Bank?    A. Well, in a general way.

Q. How do you mean by that?

A. We would discuss the deposits and the loans—the individual [533] loans quite often. I had my office in the bank building.

Q. You mean you would discuss them as individuals or as a board of directors?    A. Both.

Q. Did you ever, as a board of directors, go over the notes that were held by the bank?

A. Why, I could not say as to that—the entire holdings—I don't just remember.

Q. Did you ever personally examine the notes that were held by the bank?    A. In a general way.

Q. Well, what do you mean by “a general way”?

A. I would overlook and be present at these several meetings we would have every year.

Q. You would only have a meeting once a year.

A. We would have several meetings.

Q. How frequently would you have them in the year?

A. I don't know—we met—besides the annual meeting we met on call.

Q. At those meetings did you ever at any time have



(Deposition of E. L. Webster.)

all of the notes of the bank before you?

A. I don't know as to that.

Q. You do not recall any particular occasion?

A. I do not recall whether they were all checked over and discussed or not.

Q. You would just have a lump statement of the amount of the note.

A. Well, we knew pretty well—Mr. Joslin and I knew pretty well the loans that were made and the people who had the loans. [534]

Q. That is at the time the loan was made.

A. Yes, sir.

Q. Afterwards did you ever talk those loans or check them over to see whether or not they were paid? A. Yes.

Q. To see that they were paid?

A. Yes, sir, we looked them over very carefully.

Q. What was your custom respecting past due paper?

A. Well, the rules of the bank was not to carry any past due paper unless the interest was paid. We would try and get it removed and keep the interest paid.

Q. If you remember you may state then what was your custom. A. To collect it if possible.

Q. And if not possible, then what?

A. Mr. Parsons was always doing the best he could to get it collected.

Q. What was your custom about collecting it; did you still carry it as an asset of the bank?

A. I don't know. As I remember now, there were

(Deposition of E. L. Webster.)

small notes charged off every year that were considered worthless. I do not think, as I remember it—I don't think any notes were ever carried as assets that we did not consider collectible.

Q. Well, as to whether or not they were past due; did you continue carrying any considerable amount of past due paper as assets of the bank?

A. I don't know that I could answer that. If the note was good it was carried. If we considered it good it was carried as an asset even though it might happen to be past due. [535]

Q. Would you take any steps for renewals of it?

A. Yes, sir.

Q. How long would you allow a note to remain in the bank without a renewal after it became past due?

A. I don't know—not being in any way connected with the management of the bank, I was depending upon the manager for that end of it.

Q. As a director you were connected with the management of the bank.

A. As a director I was connected for awhile, not all of that renewing and collecting of notes came up to the manager of the bank.

Q. Did it ever come up to the board of directors, that fact that there was a considerable quantity of past due paper in the bank?

A. Well, I generally knew how much there was.

Q. Can you give me an idea what was your custom as to the amount which you usually carried?

A. No, I could not. I made no memorandum of it.

Q. In figuring the value of bank stock what do you

(Deposition of E. L. Webster.)

do respecting past due paper?

A. Well, I did not figure that we had any paper that was not good at the time.

Q. I did not ask you that; I asked you, in figuring bank stock how you would dispose of past due paper, as to the value of that?

A. Well, I did not figure any value of it—I did not figure any value on it.

Q. You mean you eliminated it from the value?

A. I did not figure it at all—I was only going on the [536] past record of the bank when I got at the value of my stock.

Q. You figured, then, that because the bank had been paying dividends and had been earning profits in the amount of \$50,000 a year, that that fact of itself satisfied you that the stock was worth \$250,000, with reference to the past due paper that was in the bank, or the liabilities?     A. Yes.

Q. Well, would you have considered the paper in that bank, paper which should be carried as an asset of the bank, figured as an asset of the bank, in determining the value of its stock, which was as much as two years past due?

A. Well, I would, if it was good.

Q. Just take paper of that kind that was two years past due; would you have considered that when you were buying the stock of the bank, as an asset of the bank?

A. When you are figuring past due paper, are you figuring that there was no interest paid during that time?

(Deposition of E. L. Webster.)

Q. Well, we will take it that there is no interest paid. A. During that time?

Q. Yes.

A. Well, if I was figuring the value of that particular note I would not figure it at one hundred cents on the dollar.

Q. How much would you depreciate that note?

A. I don't know.

Q. The valuation which you have placed on the stock is based upon your desire to sell it or not, is it not, and not upon the valuation as a purchaser?

A. Yes, sir, you can put it that way. [537]

Q. Now, if you were buying stock in the Washington-Alaska Bank, would you not have examined the character of its past due paper and the amount of it?

A. I certainly would.

Q. If you had been buying stock in the Washington-Alaska Bank at that time, would you have paid par for past due paper?

A. Why, I am not competent to answer that—I would if I wanted it.

Q. As a purchaser of that stock?

Mr. McGINN.—We object to that, because it is not a question whether the paper is past due or not; it is simply a question as to the value of that paper—paper may be past due and still perfectly good.

Q. (Mr. RIDER.) As a purchaser of the stock of the Washington-Alaska Bank would you not have required them to have charged off their past due paper before you figured the value of the capital stock?

A. Well, that would be—that would depend en-

(Deposition of E. L. Webster.)

tirely upon the deal.

Q. Suppose that the paper was past due for as much as two years?

A. I might want them to charge it off.

Q. As a purchaser?

A. As a purchaser, but I might buy the stock if they did not charge it off—that depends entirely upon the buyer.

Q. Did you know that on September, 1909, there was held by the Washington-Alaska Bank notes which were past due which aggregated over \$70,000?

A. I did not know the exact amount; I knew there was some notes [538] past due.

Q. Did you know as a director that there were notes in that sum or about that sum which were past due at that time? A. I did not know the amount.

Q. Did you understand—

A. (Continuing.) I knew that there was some past due notes, but I did not pay much attention as to how much.

Q. You did understand that it was in an amount nearly as large as \$70,000.

A. I did not pay any attention to that.

Q. Did you know what the total amount of the loans carried by the Washington-Alaska Bank was on September 13, 1909? A. No.

Q. You did not know whether it was in the neighborhood of \$260,000 or not?

A. Well, I should think it was more than that, but I did not know.

Q. Assuming that it was \$258,000 and that there



(Deposition of E. L. Webster.)

was \$70,000 of those notes past due, would you still think that that stock was worth \$250,000?

A. Yes, sir.

Q. You are willing to take past due paper as a purchaser? A. I did not say that.

Q. But as a seller you were willing to unload it?

A. As a seller I was finally willing to sell at that price.

Q. Glad to sell at that price?

A. I can't say I was glad to—I did not want to sell.

Q. At that time you say it was not known to you that of the total amount of notes which the bank carried, over \$70,000, were past due. [539]

A. I did not pay any attention to that part of it.

Q. That did not concern you as a seller very much?

A. No, sir.

Q. Were you acquainted with the individuals whose notes the Washington-Alaska Bank held at that time? A. Generally.

Q. Did you know one W. M. Anderson?

A. Is that the drug man?

Q. Yes. A. Yes, sir, very well.

Q. Did you know that he had a note which had been due for over two years, held by the Washington-Alaska Bank at that time, in the sum of \$125?

A. I do not remember that.

Q. Would you have considered, as a purchaser, a note of W. M. Anderson which had been past due for over two years worth its face value?

Mr. McGINN.—To which we object on the ground that that is a note of W. M. Anderson and Oscar

(Deposition of E. L. Webster.)

Anderson—there were others in connection with it.

Q. (Mr. RIDER.) Would you have considered a note of the firm of W. M. Anderson and Oscar Anderson, held by the bank and which had been past due for over two years, or for two years, as a par asset of the bank if you were, as a purchaser, seeking to buy the stock of that bank, for the sum of \$125?

A. Well, I should think that the Anderson boys' note for \$125 would be good. I do not just understand why it was so long past due.

Q. Would not the fact that it was so long past due [540] depreciate the value of that note in your estimation as a purchaser of the stock of that bank?

A. If I had been a purchaser of the bank I do not think I would have paid much attention to a small note like that.

Q. You would have paid no attention at all to a note like that because of the size of it; is that it?

A. Because the Anderson brothers I would consider good for the amount.

Q. And you would take their note even though it had been dishonored for two years?

A. Had there been any interest paid on that note?

Q. Well, we will say that there had been none paid on it.

A. I do not remember anything about that particular case—I do not know whether I would have considered it or not.

Q. Suppose the interest had been paid in it, then what?

(Deposition of E. L. Webster.)

A. I would consider the note absolutely good.

Q. You would consider the note absolutely good even though it was two years past due?

A. Yes, sir.

Q. As a director did you sanction paper remaining in your bank until it was over two years past due?

A. I think interest could be paid on a past due note to keep it alive all the while.

Q. And you would consider that good banking?

A. I was not doing the banking.

Q. You were a director.

A. I was a director of the bank, but had nothing to do with the active management of it.

Q. The officers of the bank were subject to the control of [541] the directors, were they not?

Mr. McGINN.—That is admitted, that is a legal conclusion.

Q. (Mr. RIDER.) You knew that, didn't you?

A. I knew it, but I paid no attention to it.

Q. The fact of the matter is, you did not know that the officers of the bank were permitting these past due notes to remain in the bank, did you?

A. I may have known that as to any notes of consequence, but I paid no attention to a trifling note like that.

Q. Would you consider a note in the sum of \$5,668.30 one of consequence?

A. I should say so.

Q. You did not know that the note of W. Sam Clark in that sum was in your bank and had been

(Deposition of E. L. Webster.)

due for sixteen months?

Mr. McGINN.—To which we object on the ground that it is irrelevant, immaterial and incompetent and it is not a question as to whether or not the note was past due, but the question is as to what was the value of the note at that time and the probability of its being paid and the responsibility of the parties who signed the note.

A. I would consider Mr. Clark's note good for that amount.

Q. (Mr. RIDER.) Even though his note had been past due for sixteen months? A. Yes, sir.

Q. And as a director of the bank you would have authorized your cashier to retain that note without any renewal, although it was past due for sixteen months?

A. Well, that would be possible that there was some good excuse for it not being renewed; he may have been out of town or he may have been paying the interest, or [542] something of that kind.

Q. Could he not have been found within sixteen months?

A. I do not say as to that. I know that he is in and out—he is an operator.

Q. If you had been a purchaser of the stock of that bank, instead of a seller, on September 13, 1909, would you not have required that note of W. Sam Clark's that I just called your attention to, to be charged off?

Mr. McGINN.—That is objected to as irrelevant, immaterial and incompetent and it is not a question

(Deposition of E. L. Webster.)

as to what he would require or his opinion as to what the bank should require, but it is a question as to the value as an asset of this particular note at that time.

A. Well, not necessarily. I might have been mighty glad to have gotten hold of the stock of that bank if I had been a purchaser, regardless of past due notes.

Q. (Mr. RIDER.) And to take this note at that valuation? A. Certainly.

Q. You think as a purchaser you would have done that? A. I might have done it.

Q. Well, would you have done it?

A. I can't say that. I was not a purchaser, but I might have been mighty glad to have bought it if I had been the other fellow.

Q. What makes you think that you might have been so glad to have bought it?

A. Because it was the bank in town that was doing the business of the town and if I had owned the Fairbanks Bank and could have bought the stock of that I would not have considered the price that I was paying for it— [543] I would have considered getting it, just the same as they did.

Q. I don't understand what you mean by that.

A. I mean by that that as a seller I was not necessarily furnishing one hundred cents on the dollar in stock and in assets.

Q. Oh, I understand you.

A. (Continuing.) I was selling it for \$250,000—not whether the stock was worth that or not.



(Deposition of E. L. Webster.)

Q. You did not consider then it was necessary to consider the value of the stock in that sale?

A. No, I was not—

Q. (Interrupting.) It was just worth what you could get for it, is that it?

A. I thought it was worth more than I could get for it.

Q. I believe you stated that you were very reluctant to sell and only sold because of the fact that Mr. Parsons could not remain there?

A. I only sold because the other three were willing to.

Q. Well, you spoke something about your reluctance to sell as being affected by the fact that Mr. Parsons could not remain there?     A. Yes, sir.

Q. That had considerable to do with it?

A. That had considerable to do with it.

Q. Mr. Parsons was himself a considerable asset of that bank, wasn't it?     A. I should think so.

Q. And really a larger asset than any other individual asset that the bank had, wasn't he? [544]

Mr. McGINN.—We object to that.

Q. (Mr. RIDER.) His personality.

A. I cannot put a value on his personality in dollars and cents.

Q. Well, without Mr. Parson's connection with that bank how much would you have paid for it?

A. Well, if I had been a buyer and wanted it I would have paid what I had to pay to get it.

Q. How much would you have considered the stock worth ?

(Deposition of E. L. Webster.)

A. I would have considered the property cheap at \$250,000, if I had been an opponent of the bank.

Q. Even without Mr. Parsons' connection?

A. Yes, sir.

Q. Then Mr. Parsons' connection with the bank did not enhance the value of the stock a bit, did it?

A. Physically, possibly not.

Q. Why did you not remain there then and retain your stock if you were reluctant to sell?

A. Because Mr. Joslin and Mr. Schram and Mr. Parsons agreed to sell, provided I would, and I was simply just whipped into line.

Q. Then the fact of Mr. Parsons leaving the bank did not have anything to do with your selling, except that you wanted to retain your personal relations with him, is that it?

A. I did not want to sell if we could keep the bank in as good hands as Mr. Parsons—as I considered Mr. Parsons was.

Q. Then you do consider that Mr. Parsons himself was a considerable asset to that bank, don't you?  
[545]

Mr. McGINN.—Objected to as incompetent, irrelevant and immaterial.

A. I would consider him valuable.

Q. (Mr. RIDER.) And that value a purchaser of the stock would lose when Mr. Parsons retired, would he not?

A. Not necessarily. They were buying it with the understanding that he would retire.

Q. Now, did you know that there was a note held

(Deposition of E. L. Webster.)

by that bank on September 13, 1909, signed by Garvin, Simonson et al., which was twenty-eight months past due, in the sum of \$6,717.34?

A. I don't remember that particular note.

Q. Did you regard that note as good?

A. Well, I can't say that I know very much about that note.

Q. As a purchaser of the bank would you have accepted that note at that sum?

Mr. McGINN.—To which we object, because the witness is shown clearly to be incompetent, because he says he knows nothing about that particular note and does not recall at this time that particular note and he cannot say what he would do then.

Q. (Mr. RIDER.) You are acquainted with those parties, Garvin, Simonson & McRae?

A. Just in a personal way.

Q. You know their financial standing and you knew it at that time, didn't you?

A. Well, I should have considered that note good at that time.

Q. And as a purchaser at that time you would have taken that note, even though it was twenty-eight months past [546] due?

A. At this time I do not know what the security was. I do not know anything of the particulars of it. I probably would have taken that note at that figure, as far as I know now.

Q. Even though it was twenty-eight months past due?

A. Well, I don't know anything about that particular note.

(Deposition of E. L. Webster.)

Q. Assuming that it was twenty-eight months past due?

A. Was there no interest paid on that?

Q. Well, we will say no that there was not.

A. Of course I do not know what the circumstances were that it should be so long past due.

Q. Well, assuming that the interest had been paid, then would you have taken that note?

A. I considered the note good, of course.

Q. Why did you not take new notes for those notes? A. I don't know.

Mr. McGINN.—We object to that—what difference does it make whether it was the old note or a new note, the obligation was there just the same.

Mr. RIDER.—You know as a lawyer that it makes a difference when a note is past due.

Mr. McGINN.—When it is held by the bank what is the difference whether it is past due or not?

Mr. RIDER.—You know better than that; when a note is assigned you know the effect of it.

Q. Were you acquainted with the Tanana Trading Company at that time?

A. I might know the names of the individuals better than I would the name of the company. [547]

Q. I do not know anything about it except the name of the Tanana Trading Company.

Q. Was that the Dickey Company or the Clark?

A. I can't tell you—did you know that there was a note held by the bank on the 13th day of September, 1909, of the Tanana Trading Company in the sum of

(Deposition of E. L. Webster.)

\$2,175.82, which was fifteen and a half months past due?

Mr. McGINN.—I object to that as irrelevant, immaterial and incompetent and as not tending to show the value of the note at that time.

A. What was the question?

Q. (Mr. RIDER.) I asked you if you knew that there was a note held by the bank on the 13th day of September, 1909, of the Tanana Trading Company in the sum of \$2,175.85 which was fifteen and a half months past due? A. I do not remember it.

Q. Mr. Webster, have you been engaged in the banking business to any other extent than your connection with the Washington-Alaska Bank?

A. No, sir, except as a stockholder in the Dexter Horton National Bank.

Q. Are you a stockholder now in the Dexter Horton National Bank? A. Yes, sir.

Q. You are not an officer in that bank?

A. No, sir.

Q. You are not familiar, then, with the handling, the buying and selling of bank stock?

A. Well, now, I never had bought and sold very much.

Q. Well, you never sold any except the Washington-Alaska Bank [548] stock, did you?

A. No, sir.

Q. And you never bought any except the Dexter Horton National Bank stock? A. No.

Q. When did you buy your Dexter Horton National Bank stock?



(Deposition of E. L. Webster.)

A. I bought several little lots from time to time.

Q. Were you acquainted with A. Rippa?

A. Yes.

Q. You were acquainted with him?

A. Yes, sir.

Q. Did you know that he had past due paper in the bank on September 13, 1909, in the sum of \$3,766.66 which was over three months past due?

A. I did not know the particulars. I knew he was a debtor of the bank—I did not know the particulars.

Q. Did you know A. H. McNeer?

A. Yes, sir, very well.

Q. Did you know that he had past due paper in the bank on that day which was eight months past due, in the sum of \$726.56?

A. I knew he was a debtor of the bank.

Q. Well, did you know his paper was past due?

A. I don't remember.

Q. Can you say as to whether or not it is a custom in banking circles, or was such custom in September, 1909, to charge off past due paper?

Mr. McGINN.—To which we object. It is not a matter of custom; it is what this particular bank did.

A. What is the question? [549]

(Question repeated.)

A. I don't know.

Q. (Mr. RIDER.) What was your answer?

A. I don't know.

Q. I believe you stated that the real estate held by the bank, in your opinion, was worth \$17,536.23?

A. Yes, sir.

(Deposition of E. L. Webster.)

Q. When did you leave Fairbanks after you sold your stock?     A. I should say in about two weeks.

Q. Have you returned there since?     A. Yes.

Q. When was the next time you were back there?

A. The next spring.

Q. About what time?

A. Why, I think I reached Fairbanks in about May.

Q. Had real estate advanced any in Fairbanks by the time you got back there in May?

A. I don't know.

Q. You still owned real estate there?

A. And I still do yet.

Q. And you were as familiar with it in May as in September, were you not?     A. Yes.

Q. What would you think was the value of the Washington-Alaska Bank building and its real estate in, say, April or May, 1910?

A. I would not think that it had depreciated very much.

Q. Would you think it had increased any?

A. No, I don't know that it would have increased very much.

Q. You think it would have remained about the same? [550]     A. About the same I should think.

Q. Now, I believe you stated that the bank was carrying, in September 13, 1909, about \$700,000 in cash—are you just making a guess at that?

A. I was just making a guess at it. Of course every statement they had made for years would vary

(Deposition of E. L. Webster.)

up and down and I do not remember any particular annual statement.

Q. By the term "cash" do you include gold-dust and bullion, or just currency?

A. Well, I would say that the bank never carried very much gold-dust or bullion. Their cash on hand was usually actual cash. The bullion and gold-dust was shipped.

Q. That is just a matter of opinion on your part?

A. That is a matter of opinion on my part.

Q. Don't you know as a matter of fact that they had \$221,000 of gold-dust on hand?

A. It would be possible. They ship that much at a time. They ship as high as \$500,000 at the time.

Q. The opinion which you have given respecting the value of this stock, Mr. Webster, is based upon your standpoint as a seller? A. Certainly.

Redirect Examination.

Q. (Mr. McGINN.) You were around the bank a great deal of the time during the time that you were in Fairbanks, were you not? A. Yes, sir.

Q. And you and Mr. Parsons and Mr. Joslin had been very friendly and intimate for years? [551]

A. Yes, sir.

Q. And you naturally discussed the business of the bank between you day after day? A. Yes, sir.

Q. And as a matter of fact you knew about all the principal loans of the bank at that time, didn't you—you knew just about what they were?

A. I knew about what they were, yes.

Q. And you also had in mind at that time about

(Deposition of E. L. Webster.)

how much of those notes were good and about how much were bad?     A. Why, I should say so, yes.

Q. Now, what you considered bad notes or bad debts you wiped off at certain times, didn't you?

A. Every year they were charged off.

Q. Don't you know that it is very common to allow notes to continue past due in Fairbanks, in all the banks there?     A. Yes.

Q. For instance, take the note of Frank Lawson—you know T. F. Lawson?     A. Very well.

Q. At the time of the sale to the Fairbanks Banking Company there was a past due note of his in the sum of \$4,344.50—now, merely because that was past due would not affect its value in your mind, would it?     A. Not a bit.

Q. You knew he was absolutely good for it?

A. Absolutely.

Q. And there was a note of Heilig & Tozier for the sum of \$513 that was due from October 8, 1907; would you consider that a good note at that time? [552]     A. Absolutely good.

Q. There was a note of J. C. Kenney that was due from May 2, 1909, in the sum of \$156.03; would you have considered that note good?     A. Absolutely.

Q. There is a note of the Rose Cigar Company dated September 2, 1908, in the sum of \$1,060; would you have considered that a good note?

A. I would.

Q. The mere fact that it was past due would not make any difference to you in placing a valuation upon those notes as long as you knew that the par-

(Deposition of E. L. Webster.)

ties were good?     A. Not a bit.

Q. And that is true of all these notes here?

A. Yes, sir.

Q. Do you know any reason why that note against W. Sam Clark was not collected?     A. No.

Q. Do you know any reason why the note against Simonson was not collected?     A. No.

Q. You considered Arthur McNeer worth \$726, didn't you?     A. I did.

Q. And Oscar and Walter Anderson were engaged in the drug business?     A. Yes, sir.

Q. They were men of good standing in the community?     A. Yes.

Q. And their note for \$125 would be considered by anybody in there as good at that time?     [553]

A. I should say so.

Q. Do you know any reason why it has not been collected?     A. No.

Q. You knew in a general way just about the actual condition of the bank at the time of the sale to the Fairbanks Banking Company?     A. Yes, sir.

Q. And upon that and upon the standing of the bank in the community, you fixed the valuation which you have placed upon it.     A. Yes.

Recross-examination.

Q. (Mr. RIDER.) If those notes which Mr. McGinn called your attention to were good, why were they not collected while they were held by the Washington-Alaska Bank?     A. I don't know.

Q. Why were they not collected while held by the Washington-Alaska Bank prior to the time they



(Deposition of E. L. Webster.)

were transferred to the Fairbanks Banking Company?

A. I do not know. The interest may have been paid regularly on them.

Q. How much bad notes did the Washington-Alaska Bank hold in September, 1909?

A. I do not know.

Q. Did it hold any?      A. I don't know.

Q. You stated it was the custom to charge off each year the bad notes; what time in the year did you make that charge-off? [554]      A. I don't know.

Q. You don't know?

A. I could not tell you that.

Q. Well, you say—you stated that such was the custom, didn't you?

A. It was—I don't know—what I meant by that—I don't know that they were charged off at any particular time. I am rather inclined to think that they were charged off when it was discovered that they could not be collected.

Q. You stated that at the end of each year you charged off the bad notes, didn't you?

A. I presume that at that time any that had not been charged off before were charged off.

Q. At the end of each year?

A. Well, I would not say that positively.

Q. When did your fiscal year begin?

A. I might qualify my statement about not being more familiar with the bank, in this way, that I was not a trustee or a director in the bank at the beginning—possibly the first three or four years—at the

(Deposition of E. L. Webster.)

beginning of the bank I was not a trustee.

Q. How long were you a trustee prior to the sale?

A. I should say a year, I would not be positive about that.

Q. Were there any bad notes charged off during the time you were trustee?

A. Well, I don't know exactly about that.

Q. Well, you made some reference to charging off bad notes; do you know what the amount of the bad notes was that were held by the bank in September, 1909?

A. I do not know anything about it. [555]

Q. It had some, didn't it?

A. I don't know that—it may have had for all I know.

(Deposition of witness closed.)

[Endorsed]: Received Clerk of the Court Office, Apr. 20, 1914, Fairbanks, Alaska. Filed in the District Court, Territory of Alaska, 4th Div. Apr. 20, 1914, Angus McBride, Clerk. By P. R. Wagner, Deputy. [556]

Mr. McGINN.—I desire now to read the deposition of F. E. Barbour. (Reads deposition.) [557]

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**[Deposition of Frank E. Barbour, for Defendants.]**

FRANK E. BARBOUR, produced as a witness in behalf of defendants, being first duly cautioned and sworn, testifies as follows:

Q. (Mr. McGINN.) State your name.

A. Frank E. Barbour.

Q. Where do you reside, Mr. Barbour?

(Deposition of Frank E. Barbour.)

A. Spokane, Washington.

Q. How long have you lived in Spokane, Washington?     A. About four years.

Q. What is your occupation, Mr. Barbour?

A. Auditor of the Day & Hansen Security Company.

Q. How long have you been with them?

A. A little over a year.

Q. And prior to that time what were you doing?

A. I was deputy state bank examiner for three years.

Q. For the state of Washington?     A. Yes, sir.

Q. Prior to coming to the state of Washington, where did you live?     A. In Fairbanks, Alaska.

Q. When did you go to Fairbanks, Alaska?

A. I went on April 6th, 1905.

Q. How long did you continue to live there?

A. Four years and a half.

Q. And while in Fairbanks, Alaska, what did you do?

A. I was cashier of the Washington-Alaska Bank during that time.

Q. And as cashier of the Washington-Alaska Bank of Washington, you were familiar with the resources and liabilities of that bank during the time that you were there?     [558]

A. I was; I had charge of them all.

Q. Were you at Fairbanks at the time that the Washington-Alaska Bank of Washington sold out to the Fairbanks Banking Company?     A. I was.

Q. And at that time were you familiar with the re-

(Deposition of Frank E. Barbour.)

sources and the liabilities of the Washington-Alaska Bank?     A. I was.

Q. Do you know, approximately, about what the amount of the deposits of the bank were at that time?

A. Yes, sir, approximately \$1,800,000.

Q. And do you remember about what their loans and discounts amounted to at that time?

A. No, I do not. It seems to me it was something like \$150,000; I am not sure about that though.

Q. \$258,000.     A. I know it was very small.

Q. Do you remember what percentage of cash you had on hand?

A. In our September 15th statement that year, somewhere along about—we had \$1,674,000—more than 93 per cent of the deposits on hand in cash or due from banks subject to our check.

Q. Do you know what the earning capacity of that bank was during the years 1905–6–7–8 and up to September of 1909?     A. Yes, sir, I do.

Q. Will you state approximately what they were per year?

A. Well, I don't know—I have not ever figured it, but the capital and surplus and profits as shown by the statement of September I think it was something like from two hundred and eighteen to two hundred and twenty-five [559] thousand—you might say nearly all profits from the business.

Q. But there had been dividends declared.

A. There had been dividends on approximately one hundred per cent of the capital declared at the end of the first year.

(Deposition of Frank E. Barbour.)

Q. The book values of the bank, according to the statement of September 13, 1909, was approximately in the sum of \$206,000; do you remember whether or not at that time there was earned accrued interest that was not included in the book values?

A. Yes, I remember making it up, but I could not say just what the amount was. It seems to me that I had in amount something about \$218,000. Now, what the other \$12,000 was made up of I could not say.

Q. Were you there at the time that the negotiations were carrier on between the Fairbanks Banking Company and the Washington-Alaska Bank in regard to the purchase?      A. I was.

Q. Do you know the amount that the Fairbanks Banking Company paid for the Washington-Alaska Bank?      A. \$250,000.

Q. I will ask you to state whether, in your opinion, with the knowledge of the conditions of the Washington-Alaska Bank and the amount of business that they had done and their condition at that time, the sum of \$250,000 was a fair, reasonable and conservative price for the Washington-Alaska Bank?

(Counsel for plaintiff objects as irrelevant, immaterial and incompetent.) [560]

A. I think the price was very low.

Cross-examination.

Q. (Mr. RIDER.) Do you own any stock in the bank?

A. I own enough shares to make me a director.

Q. How many shares did that make?



(Deposition of Frank E. Barbour.)

A. One share?

Q. This item of \$218,000 to which you have referred, what was that made up of?

A. Capital, surplus and profits collected and uncollected, as I remember it.

Mr. RIDER.—That is all.

(Deposition of witness closed.)

[Endorsed]: Received Clerk of the Court Office, Apr. 20, 1914, Fairbanks, Alaska. Filed in the District Court, Territory of Alaska, 4th Div. Apr. 20, 1914, Angus McBride, Clerk. By P. R. Wagner, Deputy. [561]

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**[Testimony of Sidney Stewart, for Plaintiff  
(Recalled).]**

SIDNEY STEWART, resumes his testimony on direct examination.

Mr. McGINN.—Q. Have you got the daily record balance book of the Washington-Alaska Bank of date the 13th day of September, 1909?

A. The daily balance record book?

Q. The daily statement book. A. Yes.

Q. If you will take a piece of paper and a pencil again—What date is that?

A. September 13, 1909.

Q. What does it show the amount of assay clippings that there were on hand on that date, that is, gold? A. \$3,473.75.

Q. How much gold-dust?

A. Gold-dust \$221,919.71.

Q. How much gold bullion? A. \$6,000.

(Testimony of Sidney Stewart.)

Q. How much money did they have on deposit with the Washington Trust Company?   A. \$258,734.42.

Q. How much on deposit with Wells Fargo Nevada National Bank?   A. \$760,033.43.

Q. How much with the Bank of Manhatten?

A. \$2,630.47.

Q. How much with the National Bank of Commerce, Tacoma?   A. \$39,985.27.

Q. Puget Sound National Bank?   [562]

A. \$27,134.76.

Q. Seattle National Bank?   A. \$25,252.67.

Q. Dexter-Horton Company?   A. \$31,275.48.

Q. Canadian Bank of Commerce, Seattle?

A. \$342.21.

Q. Scandinavian-American Bank?   A. \$327.95.

Q. Canadian Bank of Commerce, Dawson?

A. \$3,212.39.

Q. Bank of British North America?

A. \$1,275.99.

Q. Valdez Bank & Mercantile Co?   A. \$505.29.

Q. Fairbanks Branch. That is Fairbanks Creek branch bank?   A. \$4,106.80.

Q. Fox Branch?   A. \$2,013.71.

Q. Cash in vault?   A. \$345,063.44.

Q. Now, all of this, except the cash that they had in the vault, and the gold-dust and bullion, was all subject to check, was it not, with the exception—

A. How is that?

United States  
Circuit Court of Appeals

For the Ninth Circuit.

Transcript of Record.

(IN FOUR VOLUMES.)

JOHN A. JESSON, E. R. PEOPLES, JAMES W.  
HILL, RAY BRUMBAUGH, R. C. WOOD  
and JOHN L. MCGINN,

Appellants,

vs.

F. G. NOYES, as Receiver of the WASHINGTON-  
ALASKA BANK, a Corporation, Organized  
Under the Laws of the State of Nevada,

Appellee.

VOLUME III.

(Pages 641 to 960, Inclusive.)

Upon Appeal from the United States District Court  
for the Territory of Alaska, Fourth Division.

Filed

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**United States**  
**Circuit Court of Appeals**

**For the Ninth Circuit.**

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**Transcript of Record.**

**(IN FOUR VOLUMES.)**

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JOHN A. JESSON, E. R. PEOPLES, JAMES W.  
HILL, RAY BRUMBAUGH, R. C. WOOD  
and JOHN L. MCGINN,

Appellants,

vs.

F. G. NOYES, as Receiver of the WASHINGTON-  
ALASKA BANK, a Corporation, Organized  
Under the Laws of the State of Nevada,

Appellee.

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**VOLUME III.**

**(Pages 641 to 960, Inclusive.)**

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**Upon Appeal from the United States District Court  
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(Testimony of Sidney Stewart.)

Q. That was all subject to check, these deposits in the bank? A. The deposits.

Q. Yes, in the outside banks like Wells Fargo and the Washington Trust Company.

A. It is supposed to be available credit, yes.

Q. Equivalent to cash. A. I understand that.

Q. What is the total of that, Mr. Stewart?

A. \$1,733,287.68.

Q. Now, upon that date, what were the individual deposits, that is, commercial deposits other than the savings? A. There was \$1,150,406.43.

Q. How much were the savings?

A. \$233,423.48. [563]

Q. What was the amount of the demand certificates? A. \$159,325.02.

Q. Time certificates? A. \$94,167.29.

Q. Cashier checks? A. \$184.31.

Q. Certified checks? A. \$2,752.98.

Q. Letters of credit? A. \$8,900.

Q. Due Cleary Branch? A. \$65,037.92.

Q. Due Dome Branch? A. \$157,825.45.

Q. Does that show all the demands that existed against the bank upon that date? I am not talking about capital stock, undivided profit, or circulation of dividend. A. Not the dividend account?

Q. No, not the dividend account.

A. I believe that takes them all.

Q. Can you tell me what that totals?

A. \$1,872,023.08.

Q. What liabilities, other than those, existed upon that date? Capital stock how much?

(Testimony of Sidney Stewart.)

A. Capial stock \$150,000.

Q. Undivided profits how much? A. \$6,248.37.

Q. They were carrying that much undivided profits at that time?

A. That is in the undivided profit account \$6,248.37, part of their accumulated earnings.

Q. How much accumulated earnings?

A. The accumulated earnings, as shown from the account, is \$118,633.93. That is not deducting the other side.

Mr. RIDER.—Q. Is this \$6,000 of undivided profits included in that accumulated earnings?

A. Yes, sir.

Mr. McGINN.—Q. Just deduct the expense from that, and it will give us the amount of the undivided profits. [564] A. \$64,808.18.

Q. That is the net earnings upon that date?

A. That is the net earnings.

Q. Circulation? A. Circulation is \$94.

Q. That has reference to scrip, has it not?

A. Yes, sir.

Q. Then, dividend account? A. \$4,500.

Q. Do you know whether that dividend account is for a dividend that was declared upon the capital stock and put in the dividend account, and had never been paid to the party entitled to it or not?

A. There is on August 17, 1909, a debit to undivided profit of \$18,000, and a credit to dividend account.

Q. That is what it is; some dividend that had been declared?

(Testimony of Sidney Stewart.)

A. It appears to be, yes, sir. But I don't know anything about it without looking it up.

Q. Those are all of the liabilities that existed upon that date, aren't they? A. And the capital stock.

Q. You have the amount of the liabilities of that date, other than the capital stock, undivided profits, this circulation amounting to \$94, and the dividend; and I ask you to subtract that amount from the amount of cash and bullion and money on deposit elsewhere on that date, which I believe you stated amounted to \$1,733,287.68. A. Subtract what?

Q. Subtract that amount from the \$1,872,023.08.

A. \$138,735.40.

Q. So that upon the 13th day of September, 1909, the Washington-Alaska Bank of Washington had money and bullion, or what was [565] the equivalent of money deposited with these other banks, sufficient on hand to pay all of their liabilities, with the exception of capital stock, undivided profits, circulation, and this dividend account you have testified to, with the exception of \$138,735.20.

A. Yes, sir. There is one little item of \$84 that I left out. I just noticed it on the other side.

Q. That would make the undivided profit, then, \$64,723.30. A. Just that difference is all.

Q. Now, to satisfy this \$138,735.20 they had loans and discounts upon that date amounting to how much? A. \$258,545.35.

Q. They had stock and securities amounting to how much? A. \$59,875.

Q. Do you know whether or not that was the stock

(Testimony of Sidney Stewart.)  
of the First National Bank?

A. I believe that is the stock of the First National Bank. Yes, sir.

Q. They had their buildings and real estate, amounting to how much?

A. \$12,976.89, and assay outfit \$2,505.25, and furniture and fixtures, \$5,245.31.

Q. Then there is an item there of L. A. Wing, is there not, carried as an asset? A. Yes.

Q. How much is that? A. \$1,367.47.

Q. Do you know what that was for?

A. I do not.

Q. What does that aggregate or total?

A. \$340,515.27.

Q. To pay this balance of \$138,735.20 that was due to banks, [566] and to capital stock, and undivided profits, circulation and this dividend?

Q. Yes, sir.

**[Testimony of R. C. Wood, for Defendants.]**

R. C. WOOD, a witness for defendants, heretofore sworn, testified as follows, to wit:

**Direct Examination.**

By Mr. McGINN.—Q. What is your name?

A. R. C. Wood.

Q. You reside in Fairbanks, Alaska? A. I do.

Q. How long have you resided here?

A. Since April, 1903.

Q. What is your business at present?

A. I am president of the First National Bank.

Q. Are you acquainted with an institution that was known as the Fairbanks Banking Company?



(Testimony of R. C. Wood.)

A. I am; yes, sir.

Q. State whether or not you were one of the founders of that institution.     A. I was.

Q. You and Captain E. T. Barnette.

A. Captain Barnette and I organized it.

Q. Afterwards Mr. James W. Hill became a member of the institution with you. [567]

A. Yes, I think along in May, 1905? Mr. Hill became a partner with Captain Barnette and myself.

Q. And the copartnership of Barnette, Hill & Wood continued until the partnership sold out to the Fairbanks Banking Company, a corporation, on the 16th day of March, 1908.     A. It did, yes, sir.

Q. At the time of the organization of the Fairbanks Banking Company, where were you?

A. The incorporation?

Q. Yes.     A. I was in Seattle at that time.

Q. When had you left Fairbanks?

A. I think about the 13th or 17th of November, 1907.

Q. For what purpose did you leave here?

A. I went to arrange for a credit for the Fairbanks Banking Company; also to take out \$200,000 in gold bullion.

Q. Now, prior to the time that you left here, did you give Mr. James W. Hill a power of attorney, or in 1906 did you give him a power of attorney?

A. I gave Mr. Hill a power of attorney in 1906.

Q. What was the purpose of that?

A. Mr. Hill was going outside at that time, and

(Testimony of R. C. Wood.)

Mr. Causten was suing E. T. Barnette, and in the event of a reorganization of the partnership which might be necessitated by the Caustens suit, Mr. Hill would have my full power of attorney to act for me.

Q. In case he should organize a partnership out there?

A. Yes, sir, that was the purpose. I was at Seattle in December when the Fairbanks Banking Company suspended. I was notified by wire, and I immediately made plans for the organization of a bank in Seattle. I [568] talked the matter over with Mr. McCord and Mr. M. J. Cornell, and Mr. Cornell talked it over with Bachus of the National Bank of Commerce, and we concluded that we could organize a bank outside to take over the affairs of the Fairbanks Banking Company, a partnership. I worked on that proposition for some time, and notified the bank here that I was doing so. And I received a telegram from Mr. Hill or the Fairbanks Banking Company—I don't know who it was from—to the effect that there was some scheme on foot in Fairbanks to organize a miners' and merchants' bank and that they thought it would be a good idea for them to make some arrangements with these proposed incorporators to take over the Fairbanks Banking Company, a partnership, and wired me, and I told them to go ahead, and I then discontinued all further efforts for the organization of the bank that I was making outside.

Q. That is the organization that you speak of in these telegrams which were introduced in evidence.

(Testimony of R. C. Wood.)

A. Yes, sir. That is the organization.

Q. What more did you hear in regard to that matter about the organization of the bank here?

A. The matter went along for some time, and I was informed by telegram in a week or so—I was hearing constantly from the bank. I was transacting business for them out there—and they finally told me—in the first place they told me that a committee had been appointed by the depositors to take over the assets of the Fairbanks Banking Company for the protection of the depositors of the partnership, and later on a telegram came to the effect that plans were being made for the organization of this new bank. They telegraphed me that the stock had been oversubscribed, and that they had [569] issued us \$88,000 in stock; that the corporation had rejected certain assets that belonged to the partnership, and that plans were being made for the organization of the bank about February, 1908, and also asked me to endeavor or see what I could do towards getting credit for the new bank in the way of exchange for the purpose of drawing against it for the purpose of getting telegraphic orders and drafts.

Q. That is about all the information you received, is it, by telegram or by letter?

A. I think that is about all.

Q. You got that letter of Mr. Hill's that was dated the 8th day of February, didn't you?

A. Another thing that I will say: Sometime in the latter part of January I received a telegram to the effect that Mr. Hill was on his way to Seattle or to

(Testimony of R. C. Wood.)

Valdez, and for me to go to Valdez and meet him and talk over the organization of this bank. I left for Valdez and met Mr. Hill there sometime the latter part of January, or first part of February—I don't remember exactly when it was. I know the boat I came on was leaving in a day or two, and the stage was leaving that morning or that afternoon—I forget whether it was that morning or in the afternoon—but I rode out to Wortman's with Mr. Hill and stayed all night with Hill at Wortman's, and during that time and out there we talked over the organization of the bank. There were certain things I didn't like, and I told Mr. Hill that unless Barnette agreed to certain demands or propositions I made that I would go ahead with the organization, and for him to telegraph him to that effect. And I went [570] outside, and Mr. Hill proceeded to Fairbanks. I went back to Seattle, and after I had been in Seattle some little time, around the latter part of February, I received a telegram from Mr. Hill from Fairbanks to the effect that Barnette would not agree to the proposition I made. Then I sat down and wrote him this letter of February 29, 1908, to the effect that if I had any stock in the bank I wanted him to sell it.

Q. The letter that was introduced in evidence?

A. Yes, sir. I told him in that letter that I wasn't going to have anything more to do with the Fairbanks Banking Company. I intended, upon my return to Fairbanks, to start a brokerage office, and I expected to act as cashier of the bank until I was discharged—until I had an opportunity to resign.



(Testimony of R. C. Wood.)

The bank paid my expenses outside that winter, and I felt duty bound to act as cashier for them.

Q. What acts did you do out there as cashier of the Fairbanks Banking Company?

A. Well, there were quite a number of things to do. My main purpose was trying to raise a credit for the Fairbanks Banking Company which they could draw drafts and telegraphic exchange against.

Q. Seattle and San Francisco were all upon a scrip basis?

A. All upon a scrip basis at that time and before I returned to Fairbanks. I did succeed in raising a credit with Dexter Horton of \$175,000 or \$250,000, and I got \$75,000 in currency and sent it by registered mail to Fairbanks at that time. Then I came back to Fairbanks, and at the first meeting of the board—(interrupted). [571]

Q. When did you arrive here?

A. I arrived about the 12th or 13th of April. I couldn't tell exactly. I think they state the 17th, and I looked up records here to find—(interrupted).

Q. That was in 1908            A. In 1908.

Q. Then, what did you do in connection with the Fairbanks Banking Company?

A. Well, at the first meeting of the board of directors of the bank, I resigned—put in my resignation.

Q. Have you got that letter of resignation?

A. I think that is on file in the secretary's files of the Fairbanks Banking Company.

Q. Do you remember about what date that was?

A. That was May 12, 1908. That was the first



(Testimony of R. C. Wood.)

meeting of the board of directors after I reached here.

Q. Was that accepted by them?

A. No, it was not. They held that meeting in the evening. I was not a director of the bank, and I didn't attend that meeting. Mr. Robinson later on came down to my house in the evening, and asked me if I wouldn't reconsider from the fact that the bank was on a scrip basis, and he thought it would be better, and the directors would feel better about it, if I would remain until the bank was on a basis to pay cash. I told him I would stay until I could exercise an option I thought I had on stock of the Fairbanks Banking Company that fell due the 1st of July, that I would stay until that time.

Q. How long did you stay?

A. I stayed until the 29th day of June, 1908.

Q. State whether or not you handed in your resignation upon that date? [572]

A. I handed in my resignation at that time and ceased my duties as cashier or any other duties in connection with any other bank, and from that time on I discontinued all my relations with the Fairbanks Banking Company.

Q. Have you got a copy of your letter of resignation that you put in at that time? A. Yes, sir.

Mr. MCGINN.—Q. You resigned upon the 29th day of June, 1908?

A. I resigned upon June 29, 1908.

Q. Did you perform any duties as cashier of that bank on the 30th day of June, 1908?

(Testimony of R. C. Wood.)

A. No, sir, I didn't. At the time I sent my resignation in, I requested them to pay me \$13,000 surplus.

Q. \$13,000 surplus?

A. Surplus that I had when the corporation took over the assets of the partnership; also pay me \$10,000 for my portion of the accrued interest.

Q. I am not at that yet. Now, when you arrived here in April, about the 13th or 14th—whenever it was—what did you do in the way of signing any papers transferring any property to the Fairbanks Banking Company, a corporation?

A. The corporation had been doing business since the 16th day of March, 1908. I arrived here, as I say, about the 12th or 13th of April, and shortly after my arrival they had a meeting of the executive committee and they asked me [573] to sign a transfer of the assets of the partnership to the corporation. I read the agreement over, and there was a clause in it to the effect that I should be paid in stock for my interest in the surplus of these assets. I told them that I wouldn't sign it.

Mr. RIDER.—That is objected to as incompetent; an attempt by parol testimony to vary the terms of a written agreement.

Mr. McGINN.—They are strangers to this agreement, not parties to it, and they can't object to it.

Mr. RIDER.—In what way is the receiver a stranger to the agreement?

Mr. McGINN.—The receiver is not here representing the corporation, or the bank, or the stock-

(Testimony of R. C. Wood.)

holders at this time. He is here simply representing the creditors, and as such is a stranger to the transaction. (Argument.)

The COURT.—He may answer, subject to the objection.

A. I refused to sign the agreement. I told them I had been allowed to accept \$13,000 due me in cash and that I did not intend to take any stock in the corporation. They told me that that had been provided for, and that I would be paid the \$13,000 cash on the 1st of July, 1908. And I asked them how I would be certain of this, and they showed me the minutes of the proposed stockholders, and also the minutes of the board of directors. And they paid me the money, so I had no reason to doubt it.

Q. I call your attention to the minutes of the first meeting of the board of directors held at Fairbanks, Alaska, on the 12th day of March, 1908, which has been marked as Plaintiff's Exhibit "E," and ask you to examine paragraph 22 thereof, or that portion thereof that they showed to you at that time in reference to your right to money instead [574] of stock. (Hands same to witness.)

A. Yes, sir. They showed me that.

Q. What part of it?

A. (Reads.) "That should James W. Hill and R. C. Wood not take the full \$44,000.00 in stock in the new corporation the balance of the amount not so taken to be paid to them not later than July 1, 1908."

The COURT.—Q. Who showed you that?

A. The executive committee.

(Testimony of R. C. Wood.)

Mr. McGINN.—Q. I believe you said that they assured you at that time that that would protect you.

A. Yes, sir.

Q. I will ask you to state whether or not upon that assurance you signed the contract that is in evidence here marked Plaintiff's Exhibit "C"?

A. I certainly did, and they all knew that I was going to leave the bank.

Q. Now, what was said at that time in regard to making out a new contract or agreement in case you would not sign?

Mr. RIDER.—We object as irrelevant, incompetent and immaterial.

The COURT.—The same ruling; received, subject to the objection.

A. They told me that the corporation had been doing business upon that agreement for almost a month, and that it would cause a great deal of inconvenience and probably trouble; that this had been filed, and transfers of property made upon that agreement. And they paid me the money shortly after.

Q. Did you ever receive any stock?

A. No, sir. I did not.

Q. Was any stock ever tendered to you?

A. No, sir. It was not. [575]

Q. How long did you continue to act as cashier?

A. Up to the 29th of June.

Q. Then what was done in regard to this stock?

A. Well, I don't know.

(Testimony of R. C. Wood.)

Q. What was done in regard to the bank paying you any money?

A. On the 30th day of June, I think, or the 1st of July, they gave me a check for my surplus \$13,000. I wouldn't say that they gave me the check; whether they placed it to my credit or gave me a check for it.

Q. Anyway, you got the money at that time?

A. I got the money at that time.

Q. Then you severed all connection with the bank?

A. I did.

Q. That is on the 29th day of June?      A. Yes, sir.

Q. Then what did you do?

A. Then I opened up a brokerage office; real estate and brokerage.

Q. In Fairbanks here?      A. In Fairbanks.

Q. How long did you continue in the brokerage business?      A. I continued until May, 1909.

Q. What did you do then?

A. Sometime during the early part of May, 1909, Captain Barnette and Mr. Parsons came over to my office and told me that— [576]

Q. Do you remember the time that the Fairbanks Banking Company purchased the stock of the Washington-Alaska Bank?      A. Yes, sir. I do.

Q. That was in September, 1909?

A. In September, 1909.

Q. Did you have anything to do with that?

A. I had nothing to do with the purchase of the bank. After the bank was purchased, I was ap-



(Testimony of R. C. Wood.)

pointed advisory manager of the three institutions.

Q. What were you to receive for that?

A. I received \$50 from the Washington-Alaska Bank, and \$50 a month from the Fairbanks Banking Company.

Q. And you still performed your duties as cashier of the First National Bank?

A. Yes, sir; I devoted all my time to the First National Bank, with the exception of the evenings, when I would meet [577] the cashiers of the two institutions and go over the business at that time.

Q. When were you to assume the position of advisory manager of the Fairbanks Banking Company?

A. When Mr. Dusenbury should leave Fairbanks.

Q. When was it expected, when that resolution was passed, that Dusenbury would leave?

A. He was not to go until the first of November, 1909, but he left ten days or two weeks earlier.

Q. About the 19th of October, wasn't it?

A. I wouldn't be sure. It was around there some place.

Q. The minutes show he severed his connection with the Fairbanks Banking Company upon October 12th. Up to that time, did you know anything very much about the affairs of the Fairbanks Banking Company?

A. No, sir; not a thing. I never had seen a statement of theirs except what was published, and I had never seen any documents connected with their business at all.

(Testimony of R. C. Wood.)

Q. When did you first become acquainted, or get to be acquainted and know about the condition of the loans and discounts of the Fairbanks Banking Company and the Washington-Alaska Bank?

A. It was some time after Mr. Dusenbury left.

Q. That is, as to the Fairbanks Banking Company?

A. As to the Fairbanks Banking Company. Mr. Jackson and I one evening went over—He one night brought a list of the loans and discounts to me at that time, and later on we went over the securities together.

Q. Who was in charge then of the Washington-Alaska Bank?      A. Mr. Wesch.

Q. State whether or not you did the same thing with him? [578]      A. Yes.

Q. I will ask you to state whether or not from the notes and the securities you made a record of the notes and securities, loans and discounts that were then held by the two banks.

A. Yes, sir, I did. I made a record for the purpose of —

Q. I show you this book (producing book) which has marked upon it “399.” State whether or not that is the record you prepared.

A. Yes, sir. That is it.

Q. Of the loans and securities?      A. Yes, sir.

Q. Up to what time does that show the securities of the Fairbanks Banking Company and the Washington-Alaska Bank?

(Testimony of R. C. Wood.)

A. I kept this up until the time I resigned from the Washington-Alaska Bank and Fairbanks Banking Company.

Q. That was about the first of May, 1910?

A. The first part of May, 1910.

Q. State whether or not up to that time it shows all of the loans and securities given to secure those loans.

A. The intention was to show all of the loans that existed of the Fairbanks Banking Company and Washington-Alaska Bank that were live assets of the banks. I don't think it included the loans that had been previously charged off by either bank. I made out the sheets headed "F. B. Co." and W-A, meaning that the notes following the heading under "F. B. Co." would be the notes of the Fairbanks Banking Company, and those following under the heading "W-A" would be the notes of the Washington-Alaska Bank. In it I endeavored to state what those notes were secured by, and as much information as possible concerning each of the different loans of the two banks; and, when I severed my connection with the [579] Banks, I delivered this to the Fairbanks Banking Company to the cashier, Mr. Jackson, at that time.

Q. When did you next see the book?

A. The next I saw of it was the other day since these cases started.

Q. I found it there in the vault. I remembered the book very well, and I thought it would be of

(Testimony of R. C. Wood.)

some assistance to eliminate a good *deal trouble*, if it could be located. I didn't know that it could be found, but I found it there.

Q. Now, what is the fiscal year of the Washington-Alaska Bank and the Fairbanks Banking Company, as far as you know?

A. The fiscal year of the Fairbanks Banking Company, a partnership, and the Fairbanks Banking Company, a corporation, was December 31st, and the same with the Washington-Alaska Bank.

Q. Now, state what you did in the latter part of the month of December, 1909, in going over the loans and discounts and securities of the Washington-Alaska Bank to determine what loans were good and what were bad?

A. Prior to the closing of the books of the Washington-Alaska Bank and the Fairbanks Banking Company, I requested that Mr. Wesch, who was cashier of the Washington-Alaska Bank, and Mr. Jackson, who was cashier of the Fairbanks Banking Company, submit a list of all the loans, in both of the institutions that they considered bad. They did this, and we went over the lists together, and we concluded that that was all of the bad debts that existed at that present time, and charged them off.

Q. That existed at that time, December 31, 1909?

A. Yes, sir, at that time. While there might have been some debts that were unsatisfactory they were secured, and were to be adjusted or liquidated later.

(Testimony of R. C. Wood.)

A. In some instances, yes, and in some instances more than sufficient. In some instances more, and in some instances less. We considered that the security existing on the loans upon which we would be able to realize more than the notes, would offset those upon which we could not realize the full amount.

Q. State whether or not you charged off all loans and discounts which you considered bad.

A. We did. We went through the thing thoroughly.

Q. That applies to both banks?

A. That applies to both banks; the Fairbanks Banking Company and the Washington-Alaska Bank.

Q. Were statements made out showing the condition of the banks at that time?

A. Yes, sir. They were.

Q. As of December 31, 1909?

A. Yes, sir. I have a copy of them.

Q. Have you copies of those statements there?

A. Yes.

(Papers handed to Mr. McGinn by witness.)

Q. What did it show the surplus and undivided profits of the Washington-Alaska Bank of Washington was upon the 31st day of December, 1909?

A. Before charging the bad debts off, or after?

Q. After charging off the bad debts.

A. The undivided profits of the Washington-Alaska Bank were \$56,106.97.

Q. What amount of bad debts did you wipe off?



(Testimony of R. C. Wood.)

A. We wiped off \$8,599.59.

Q. As to the Fairbanks Banking Company, what was the surplus and undivided profits for the year ending December 31, 1909, after charging off the bad debts? [581]

A. \$9,881.78.

Q. What amount of bad debts did you charge off at that time?

A. We charged off \$23,514.39; and there was one previous charge to bad debt account of \$1,422.98; that was during the year 1909.

Q. Now, Mr. Wood, you are acquainted with Mr. Jackson pretty well? A. Yes, sir.

Q. How long had you known him?

A. I think ever since 1904 or 1905.

Q. He is a man of considerable banking experience, and was, wasn't he?

A. Yes, sir. He was cashier for the old Boston National Bank of Seattle at one time,—Mr. Chapin's bank,—which bank afterwards consolidated with the Seattle National Bank and is now known as the Seattle National Bank. He was not cashier; he was acting cashier when the Boston National Bank was in its infancy.

Q. During the time he was in Fairbanks, what was he principally engaged in?

A. I think when he first came here he went mining. Then he afterwards I think was in charge of a branch bank at Chena of the Washington-Alaska Bank.

(Testimony of R. C. Wood.)

Then afterwards he was employed by the Fairbanks Banking Company.

Q. Do you know when he went to work for the Fairbanks Banking Company?

A. I don't remember exactly. I don't remember whether it was before or after the time they reorganized.

Q. It was somewhere around 1907 or 1908?

A. Somewhere around there.

Q. He continued with the bank until it closed its doors?

A. He did as far as I know. He was outside when the bank [582] closed its doors.

Q. What kind of a man was he as to being careful and conservative?

A. He was a capable and careful fellow, and had the confidence of the community, of everybody in the community. He had held responsible positions. At one time he was with the N. A. T. Company. He was a man of good standing.

Q. State whether or not in your opinion you regarded him as a good banker? A. Yes, sir.

Q. State whether or not in your opinion he was acquainted with the standing and credit of the people in this community.

Mr. RIDER.—What is the purpose of this?

A. He most certainly was.

Mr. McGINN.—I want to show that the board of directors, in selecting Mr. Jackson to occupy this position, used care in selecting a good man.

(Testimony of R. C. Wood.)

Mr. RIDER.—There is no charge against him.

Mr. McGINN.—If that is admitted—

Mr. RIDER.—It is not admitted. It is not in issue.

The COURT. He has testified he was a competent man.

Mr. McGINN.—Q. You say you went over these loans and discounts with him.

A. I did. Yes, sir.

Q. And considered them carefully. A. Yes, sir.

Q. Now, you know Mr. Wesch? A. Yes, sir.

Q. He had been connected with the Washington-Alaska Bank for some time?

A. Yes, almost since it started. [583]

Q. He was in charge of the Washington-Alaska Bank that winter, was he? A. Yes, sir. He was.

Q. I will ask you to state whether or not in your opinion you regarded him as a competent and able banker? A. I certainly do.

Q. A man of good standing? A. Yes, sir.

Q. And good judgment?

A. Yes, sir. He was recommended very highly by Mr. Parsons at the time.

Q. You went over the affairs of that bank carefully with him?

A. I did. Understand that in going over the affairs of the banks, I was never in the Washington-Alaska Bank or the Fairbanks Banking Company at that time; it was all submitted to me by reports.

Q. He was also in charge of the bank of Mr.

(Testimony of R. C. Wood.)

Hurley down in the Iditarod?

A. He was, I believe, yes, sir.

Q. Mr. Wood, I believe you testified yesterday that after Mr. Dusenbury left here, you went over the loans and discounts of the Fairbanks Banking Company, also of the Washington-Alaska Bank, and made an inventory of the securities that were given to secure the loans and discounts of the Fairbanks Banking Company and the Washington-Alaska Bank. A. Yes, sir. [584]

Q. And where is that inventory or record?

A. It is the book I referred to last night.

Q. That is numbered 399? A. Yes.

Q. Now, I would ask you to refer to that book and state what that shows the notes of J. A. York were secured by at that time?

Mr. RIDER.—Before the question is answered, I would like to ask a preliminary question.

Mr. McGINN.—We have no objection.

Mr. RIDER.—Q. That book that your attention is called to, was that prepared by yourself?

A. Yes, sir.

Q. For your information as manager?

A. For my information as manager.

Q. And kept by you as manager?—

A. Yes, sir.

Q. Of the three banks? A. Yes.

Q. But not kept as a part of the Fairbanks Banking Company's books?

(Testimony of R. C. Wood.)

A. It was afterwards turned over to the Fairbanks Banking Company.

Q. But at the time it was made and originally prepared, it was kept by you as manager.

A. Yes, sir.

Q. And kept in the office of the First National Bank. A. No, sir.

Q. Where was it kept?

A. It was kept where we had a general office.

Q. Where was your office?

A. Over the Barnette Building.

Q. It was not the same place where the Fairbanks Banking [585] Company had its place of business.

A. It was not kept there then, but it was afterwards, in May, turned over to them.

Q. It was prepared as a part of your private memoranda as manager.

A. It was prepared for the purpose of having ready reference to all the securities of the two institutions.

Q. For ready reference by you as manager.

A. For ready reference by anyone else that wanted to go through it.

Mr. RIDER.—I object to the use of the book for the reason that it is incompetent, being merely copies of memoranda kept by the witness himself of which there has not been shown inability to produce the original instruments themselves, or the regular record thereof; for the further reason that it is



(Testimony of R. C. Wood.)

irrelevant and immaterial.

The COURT.—It does not appear to be one of the regular books of the bank, but I think he may refer to it for the purpose of refreshing his memory.

Mr. RIDER.—Let me ask him one further question: Q. Did not the Fairbanks Banking Company keep a record of its own as to the securities?

A. Yes. I think they did.

Q. Have you not that record there kept by the Fairbanks Banking Company amongst those books there on that table?

A. This is of mortgages as securities (Indicating book). Then I think they had a stock ledger, too. I think this only keeps a record of the mortgages. While it was the intention of this book to keep a record of whatever securities there might be.

The COURT.—I think he may refer to it. It is more convenient, probably. [586]

A. The sheets seem to be out of order. The only memorandum of York is: "Note No., 216 for \$100, No., 260 for \$500, No., 1835 for \$100, and No., 2963 for \$20. See Timmerman." At that time the Fairbanks Banking Company had the possession of Government warrants—

Mr. McGINN.—Q. Does it show the amount of those warrants?

A. No, this book doesn't. This book doesn't mention anything about those warrants, but they had them in their possession.

Q. What do you know about the York matter?

(Testimony of R. C. Wood.)

A. Do you want the history of that York matter?

Q. Yes, sir.

Mr. RIDER.—We object as irrelevant, incompetent and immaterial.

Mr. McGINN.—Refer to the Timmerman note of \$105.

A. Number 358 made May 17, 1905, for the sum of \$105, due on demand, signed by C. Timmerman, secured by order on J. A. York.

Q. State whether or not these Government warrants that were in the possession of the Fairbanks Banking Company at that time were also security for that Timmerman note of \$105.

A. Yes, sir, it was always considered that way.

Q. Mr. York had a mail contract here in 1904, did he not?

A. He had a mail contract from Circle to Fairbanks in 1904. The bank made him advances for carrying on the expenses of his trips from Circle to Fairbanks, and he gave a power of attorney to Mr. Hill for the purpose of collecting on those warrants, and I believe notified the department at Washington to send the warrants to myself or Mr. Hill.

Mr. RIDER.—I object to that.

Mr. McGINN.—The bank received the warrants.  
[587]

A. The bank received the warrants and had them in its possession, to the amount of, I think, approximately \$3300.00.

Q. They were held by the bank as security for these notes?      A. Yes.

(Testimony of R. C. Wood.)

Q. And were subsequently paid?

A. So I believe.

Q. Where is the note of William Casey and Saler for \$40? Well, I guess there is no controversy about that being a good note, so I will pass that.

Mr. RIDER.—We don't admit that that is a good note or a collectible note, and never have.

Mr. MCGINN.—Q. You know William Casey?

A. Yes.

Q. He runs the Northern Hotel here?

A. Yes.

Q. He was good for the sum of \$40 in 1908 and 1910, was he? A. Yes, sir.

Mr. RIDER.—That is not disputed, but we don't admit that that note is a good note or that it is collectible.

Mr. MCGINN.—Q. That note was collectible at that time? A. It was. Yes, sir.

Q. I ask you to refer to the Morencey-Himes notes 675, 3056 and 3178, and state what security you had for that.

A. Secured by mortgage on 1/11 interest in 1 above Little Eldorado, 1/4 interest Discovery bench, right limit, first tier, Little Eldorado. Mortgage 1/2 interest lower 720 feet of 6 above on Fairbanks Creek, subject to first mortgage.

Q. What does that mean: "Subject to first mortgage"?

A. That was a mortgage that the Washington-Alaska Bank held on the property at that time. It

(Testimony of R. C. Wood.)

says: "Subject to first mortgage Washington-Alaska Bank."

Q. Do you know what property, if any, William Himes owned at [588] that time?

A. William Himes owned some property on Birch Creek. A 1/8 interest in number 12 below, Fairbanks Creek.

Mr. RIDER.—At what time?

Mr. McGINN.—In 1910, or at the time that he made these out. That was about when, Mr. Wood, November, 1909?

A. These were started, I think, about December, 1909, and continued until about the 1st of May, 1910.

Q. The entries were made in that record then?

A. Yes.

Q. Does that show what the full amount of those notes was originally?

A. No, it doesn't. This is the balance that was taken from the statement prepared by the different banks. The book was made from statements prepared by the different banks.

Q. What does that show was due?

A. It shows due on number 675 \$435.

Q. Who signed that note?

A. I have it Morencey as maker.

Q. Was Himes on that note?

A. I don't know. These records don't show.

Mr. RIDER.—That Morencey matter was put in judgment before the bank closed. The bank disposed of it. We had nothing to do with it. Number 1301 is the case.

(Testimony of R. C. Wood.)

Mr. McGINN.—That was Ensor and Griffith. The amount of the note was \$435.

Q. Are you acquainted with these properties, or were you acquainted with them on 1910—the properties you have read? A. Yes.

Q. I will ask you to state whether or not in your opinion they were ample security for the sum of \$435? A. They certainly were. [589]

Q. Now, you stated that at that time William Himes owned a 1/8 interest in 12 below, Fairbanks Creek. A. Yes, sir.

Q. Can you tell me what became of that interest?

A. He afterwards sold that interest in 1911 to Chesley, Ryan & Kehoe.

Q. That was when?

A. That was in 1911 or 1912, I don't remember which.

Q. Do you know what amount of money they realized, that is, made out of that 1/8 interest?

A. To the best of my recollection— (Interrupted).

The COURT.—Q. Who made out of it?

A. Chesley, Ryan & Kehoe.

Mr. RIDER.—We object to that as irrelevant, incompetent and immaterial, and for the further reason that there has been no evidence to show that Himes had any interest in that property.

The COURT.—If there is any dispute about that, I think you had better produce the records and show what the condition of affairs is.

(Argument. Objection overruled.)

A. I handled the gold-dust that came out of that



(Testimony of R. C. Wood.)

property, and I think Himes interest amounted to from \$1000 to \$1500. I don't remember exactly.

Mr. McGINN.—Q. Was that worked on a lay?

A. Yes, sir. Freeman & Larson worked that property on a lay.

Q. In April, 1910, did you believe at that time that the securities that you have enumerated here covering and securing these notes that you have read of Morencey and Himes was sufficient to meet those obligation?

Mr. RIDER.—So that I will not have to interrupt the proceedings [590] further with objections, I will make one objection, and, if the Court decides to receive the testimony, I ask that it be received subject to the objection: That is, that this testimony respecting the value of these securities and the value of these notes, in the opinion of the witness at the time referred to, is irrelevant, incompetent and immaterial.

The COURT.—You may answer, subject to the objections.

A. I believed it was good at that time.

Mr. McGINN.—Q. I will ask you to *believe* whether Mr. Jackson, who was then cashier or vice-president—which was he, cashier or vice-president?

A. I don't remember that he was vice-president. He was cashier, I know that.

Q. I will ask you to state whether or not in his opinion it was regarded as a good loan.

(Objected to as irrelevant and immaterial. Sustained.)

(Testimony of R. C. Wood.)

Mr. McGINN.—I offer to show that if the witness were permitted to answer the question that he would state that Mr. Jackson concurred in his opinion in regard to the sufficiency of this security.

Q. E. D. Howell, notes number 1174, 1274 and 601.

A. Mortgage on undivided  $\frac{1}{2}$  interest in the lower 700 feet of the Tabby Association on Treasure Creek.

Q. Do you know Howell?

A. It says: "Howell is working for Joe Egler at Hot Springs."

Q. You know Mr. Howell himself in the Hot Springs country at present?     A. Yes, sir.

Q. Do you know anything about this Tabby Association on Treasure Creek?

A. No. I do not. [591]

Q. D. H. Berger and Charles W. Kellogg, numbers 1587 and 2022. What security was there for those?

A. Number 1587 for \$557, signed D. H. Berger. I find: Mortgage on undivided  $\frac{1}{4}$  interest 1 above, first tier, left limit, Engineer.

Q. How about the Kellogg note?

A. Mortgage on undivided  $\frac{1}{4}$  interest 1 above, first tier, left limit, Engineer. Shall I read all memorandums that are in here in relation to these?

Q. Yes.

A. In that Berger matter it says: This property afterwards sold to Carter Harlow who has left country. All the ground operated winter of 1909-10. The same thing refers to the Kellogg—the same property.

Q. The Kellogg?

(Testimony of R. C. Wood.)

A. Note number 2022, made by Charles W. Kellogg. Mortgage on undivided  $\frac{1}{4}$  interest, 1 above, first tier, left limit, Engineer. Assessment work for 1910 done by the laymen.

Q. There was a lay on that property?

A. A lay on that property in 1909-10.

Q. Prior to the time you made out that—(Interrupted).

A. I presume that the lay was let during that winter.

Q. I refer you to notes 1861 and 1688 being notes of Fairburn, Kerler and Verboone.

A. Fairburn, Kerler & Verboone, number 1688 for \$1032; 1861 for \$300, 3083 for \$346. Bill of sale machinery; sold for \$700, \$300 cash, balance due June 1, 1907. Also attachment of \$300 of Kerler's with W-A.

Q. What was the amounts there due?

A. 1688 \$1032, 1861 \$300, and 3083 \$344. [592]

Q. That is not in the list, so I suppose that has been paid, that 3083. Do you know whether or not Fairburn owned any other property at that time?

A. I know that Fairburn owned property on Gold King Creek in the Bonnifield country.

Q. Do you know whether that was a producing claim or not?

A. I know that it produced in either 1908 or 1909. He worked during the summer over there, but I am not certain as to what year it was.

Q. I will ask you to state whether or not you considered that a good loan at that time. A. I did.

(Testimony of R. C. Wood.)

Q. D. W. Truitt, note number 1583.

A. 1583 was secured by mortgage on an undivided  $\frac{3}{4}$  interest in Number 8 above on Dome Creek, also a 25 horse power boiler, etc.

Q. Where was that located?

A. That was located—it doesn't say, but the boiler was located and the plant was on 8 above, I think. It was operating at that time.

Q. What was the amount of that?     A. \$1000.

Q. What do you know about 8 above on Dome?

A. Well, I don't know very much about it.

Q. That was ample security for this loan of \$1000?

A. I certainly thought it was at that time. A 25 horse-power boiler at that time would be worth more than \$1000. You couldn't purchase it for that.

Q. Alex Larson, note number 1832.

A. Alex Larson, number 1832 for \$354.35. [593]

Q. What was the amount of that note originally?

A. I don't remember particularly.

Q. State whether it was the sum of \$3500.

A. It was in that neighborhood.

Q. Where was he operating then?

A. He was operating on Tenderfoot.

Q. Where has he been for the last four or five years?     A. He has been in Fairbanks.

Q. What is his business now?

A. He is a partner in Anderson Brothers & Nerland.

Q. I will ask you to state whether that note is good to-day for the sum of \$354?

A. I think it is. I know no reason why it is not.

(Testimony of R. C. Wood.)

Q. Referring to number 1832, you believed it to be good in 1910?

A. Yes, sir. Although this record doesn't show it, there was a guaranty by a man named Koch.

Q. That was a written guaranty?

A. A written guaranty.

Q. Who was Mr. Koch?

A. Mr. Koch was a capitalist. He was in Fairbanks in early days, and was worth over \$100,000. I know this, because he offered Ronan & Matheson that much money for 12 below on Cleary Creek.

Q. And you know he guaranteed this?

A. Yes. I know he kept a large balance with the Fairbanks Banking Company at that time.

Q. Referring to 1548, note of William James on which there is a balance now of \$311, or was on April 12, 1910, a balance of \$311.97, I will ask you what that was secured by?

A. Number 1548 at that time it was \$508.42. Mortgage on [594] James Fraction between 7 and 8 below, also number 8 bench first tier, right limit, also number 4 bench first tier, left limit, on Fairbanks Creek.

Q. Do you know what the amount of that note originally was? A. It was over \$5,000.

Q. Do you know this property?

A. Well, I have been on the property, and I know it is a producing property, has been for some years.

Q. I will ask you to state whether or not that property is worth the sum of \$354.35.

A. I would like to buy it for that to-day.



(Testimony of R. C. Wood.)

Q. There was a lot of money produced from those properties?

A. Yes, sir. Conservatively they produced \$75,000. That is a very conservative estimate.

Q. That mortgage was never satisfied to your knowledge? A. Not that I know of.

Q. Note 1993, Emily Waters \$40— In regard to this James note, you believed it was amply secured to the extent of \$508.42? A. Yes, sir.

Q. On the 12th day of April, 1910?

A. It certainly was. Number 1993, \$40. Emily A. Waters. Secured by jewelry.

Q. I will ask you to state whether or not in April, 1910, you believe that jewelry was sufficient security for that loan.

A. I never saw the jewelry, but I believe Mr. Jackson considered it worth that at that time.

Q. I refer you to 1591, note of Gelding & Bechtol, and ask you what security there was for that note in April, 1910?

A. Secured by mortgage and deed of the Bechtol Fraction No. 6 above, right limit, Fairbanks Creek; also 1 above on Tenderfoot. [595]

Q. What do you know about the Bechtol Fraction, 6 above, right limit, Fairbanks Creek?

A. I don't know very much about it.

Q. What did you know about 1 above Tenderfoot Creek?

A. 1 above Tenderfoot was a producing claim. Hans Stark and Paul Fisher had, I believe, the adjoining property to it, for which they paid the Fair-

(Testimony of R. C. Wood.)

banks Banking Company, I think, \$10,000.00 for the property or for a mortgage that the bank held at that time on the property. They afterwards, I think, produced over \$75,000 on that adjoining property.

Q. I will ask you to state whether or not in April, 1910, you considered this property as sufficient security for the payment of that note.

A. Yes, sir. I did.

Q. Now, these securities were given at the time the loan was made, were they not?

A. The mortgages were given at the time the loans were made, but I think the deeds were afterwards taken.

Q. What does that show; that there were deeds taken?

A. It shows security by mortgage and deed. I think the mortgage was first given, and afterwards they deeded the property to the bank.

Q. Blodgett & Shepard, \$1700, note number 2384.

A. I don't think there was any security for that note, as far as I remember, at that time.

Q. You knew Bob Shepard, did you not?

A. I did.

Q. He had lived in this community how long?

A. Since 1904, I believe.

Q. Where had he been operating? [596]

A. He was operating on Discovery on Fairbanks Creek and on Goldstream.

Q. Who was he operating with?

A. With his brother, and a man by the name of

(Testimony of R. C. Wood.)

McBride. They also operated on 3 below on Fairbanks Creek.

Q. I will ask you whether he was a man of substantial means?     A. Shepard?

Q. Yes.

A. Yes. He was considered a wealthy man. Shepard Brothers were considered wealthy at that time.

Q. Do you know his present whereabouts?

A. No, I do not. In regard to that note, Mr. Stewart says there is \$1,636 that is to the credit of the Shepard Brothers on the books of the Fairbanks Banking Company, so it is evident—(Interrupted).

Mr. RIDER.—We don't care for any argument.

Mr. MCGINN.—You regard that note as absolutely good at that time?     A. Absolutely.

Q. And good today?     A. I do.

Q. The next is number 2417, L. E. Wing \$150.

A. That is simply a note. I don't think there was any security for that note.

Q. Mr. Wing was assistant cashier at that time of the Fairbanks Banking Company?     A. Yes, sir.

Q. In the summer of 1910?     A. Yes, sir.

Q. What salary was he getting?

A. He was getting \$300 a month.

Q. And he continued with the Fairbanks Banking Company up until the time they closed their doors?  
[597]

A. I believe he did.

Q. That note could have been collected at any time?     A. Yes, sir.

(Testimony of R. C. Wood.)

Q. You considered that good upon the 12th day of April, 1910?

A. Yes. Now, my recollection is that there was some dispute about that note at that time; that Wing had said that Barnette would settle that. Barnette had agreed to pay some portion of his expenses, and the reason that that was not paid at that time, or during the winter, was waiting for Barnette to return; he was outside; and, if Barnette didn't pay it, Wing would pay it.

Q. It was between the two of them.

A. One of them would pay it. Yes.

Q. The next is Abe Spring, vote number 2614, at that time \$812.30. This shows that there is \$631.13 now due. What was that secured by, if you know?

A. I have it listed as \$812.30, secured by 10 shares of Fairbanks Banking Company stock.

Q. Mr. Spring had paid for his stock in full?

A. Well, I don't know.

Q. That was secured by 10 shares of stock of the Fairbanks Banking Company. A. Yes, sir.

Q. Now, I will refer you to the note of Axel Erickson, number 2664. What security was there for that note? And Erickson & Johnson 2774.

A. Well, the way I have those listed is; Number 2664, \$1400 dated January 29, 1909; Erickson & Johnson No. 2774 for \$2,000, May 12, 1909, and No. 3074 for \$30; secured by mortgage on the  $\frac{1}{3}$  interest in the lower  $\frac{1}{4}$  of 5 above [598] first tier, right limit, Little Eldorado; also 2 boilers, hoist and wood.

Q. You have then 2664, 2774 and 3076.

(Testimony of R. C. Wood.)

A. Yes, sir.

Q. I will ask you to state whether or not in your opinion in April, 1910, these securities were considered by you as sufficient to insure payment of these notes. A. I considered them so. Yes.

Q. Do you know what the size of those plants were?

A. Well, this book doesn't say. I can get the size by referring to the mortgages, and get the description of all the plants.

Q. The next note is the note of Joseph Sala for \$500.

A. Under date April 15, 1909, number 2848, for \$500.

Q. Was that secured?

A. It doesn't say so here.

Q. Where was Sala interested at that time, do you know?

A. Sala has always been a more or less prominent mining operator in this district. He has operated on Treasure Creek and Vault Creek for a number of years, and he was a partner of Joe Conta's at one time and made a great deal of money.

Q. I will ask you to state whether or not you considered that note good in April, 1910?

A. I did. Yes, sir.

Q. I will ask you to state whether or not you know of Mr. Sala buying property here in town recently.

A. He has.

Q. What property did he buy?

A. He bought a store building on 4th Avenue and



(Testimony of R. C. Wood.)

Barnette St. He bought what they called "Johnnie the Harp's" store.

Q. Do you know what he paid for it? [599]

A. No, sir, but it stood him in the neighborhood of seven or eight hundred dollars.

Q. The next is the note number 2020, Max Altman. It shows that there was due on it on April 12, 1910, \$790, still unpaid according to the books of the receiver, \$495.17. I ask you what security there was on that note?

A. I have listed number 2020 amount \$790, secured by mortgage undivided  $1\frac{1}{2}$  interest in lower  $1\frac{1}{2}$  7 below Cleary;  $1\frac{1}{2}$  interest in machinery.

Q: Are you acquainted with claim number 7 below on Cleary? A. I am.

Q. Do you know who was interested with him in that property?

A. Duncan Michie and Harry Yager.

Q. Did they mine it? A. They did.

Q. During what year?

A. They mined it in 1908 and 9.

Q. I will ask you to state whether or not that property has any value to-day?

A. The First National Bank owned the lower  $1\frac{1}{2}$  of this same property, and sold it last fall for \$2,000.

Q. Max Altman was an operator, was he not?

A. Yes, sir. He was an operator.

Q. I will ask you to state where he was operating during the winter of 1909 and 1910.

A. He was a partner of S. L. Benbrook. They had a lay on the Boone ground on 4 below Cleary

(Testimony of R. C. Wood.)

Creek, supposed to be some of the richest ground in this district.

Q. He afterwards went to Iditarod, didn't he?

A. He afterwards went to Iditarod. [600]

Q. Do you know where he is at the present time?

A. No, sir.

Q. And you considered this security as ample for the payment of \$790 in April, 1910, did you not?

A. It certainly was, and good to-day.

Q. Now, there is a note of Jonas & Brown for \$2,000, that is, there was \$2,000 due upon it, according to this statement, on the 12th day of April, 1910. It has all been paid except \$185. What security, if any, did the bank hold for that?

Mr. RIDER.—\$1851 due on it.

Mr. McGINN.—Is it \$1851? The number of that note was 2511.

A. My record shows that Number 2511 was secured by 25 shares of Fairbanks Banking Company's stock. There was another note at that time secured by tobacco in the warehouse; that note was numbered 2476.

Mr. RIDER.—2476 is not on this list.

Mr. McGINN.—I am talking about number 2511.

A. 2511 is secured by 25 shares of Fairbanks Banking Company stock.

Q. And you considered that good security at that time, did you not?

A. At that time I did. Yes, sir.

Q. Now, the next note is number 2532, John Acheson and J. A. Jesson. John Jesson is indorser for

(Testimony of R. C. Wood.)

the sum of \$100; on which this shows there is still due a balance of \$94. This statement shows the condition on April 12, 1910.

A. This number 2532 shows note of \$100, signed by J. A. Jesson and John Acheson.

Q. Then there is a note number 2541, J. A. Jesson for \$1000, and 2626, J. A. Jesson \$500, and 2762, J. A. Jesson \$500, then 2728 Sutton and J. A. Jesson for \$150. [601]

A. My memorandum number 2541 for \$1000, 2626 for \$500, 2762 \$500; maker J. A. Jesson; then a memorandum showing Sutton et al. number 2728. If there was any security for that, it is not shown here.

Q. Mr. Jesson was a stockholder of the Fairbanks Banking Company?

A. He owned \$10,000 worth of stock.

Q. And had paid for it?

A. And had paid for it.

Q. And during this time, the winter of 1909-10, where was Mr. Jesson operating?

A. I think he was operating with Gust Conrad on Ester Creek. That is my recollection.

Q. I will ask you to state whether or not in April, 1910, you regarded these various loans as being good?

A. Yes, sir, we did.

Q. Mr. Jesson stood well in this community, did he? A. He did.

Q. Refer to number 2640, note of A. S. Crane \$400. I will ask you to state what that record shows that note was secured by in April, 1901.

A. Three notes listed under A. S. and E. A. Crane,

(Testimony of R. C. Wood.)

number 2640 for \$400, number 2882 for \$40, and number 2639 for \$20. Secured by bill of sale 2 engines and scraper, mortgage dump 7 below, first tier, Goldstream, and  $\frac{1}{4}$  interest in all mining dumps to the value of \$130.

Q. I will ask you to state whether or not in your opinion in April 12, 1910, you regarded that as ample security for these loans.

A. At that time we did. They had quite a dump out on [602] Goldstream; that is, they had some dump, I don't know how much. Then Crane was an owner in the Dusty Diamond, or owned the Dusty Diamond, I believe, at that time.

Q. Harry Johnson, note of \$1200, number 2726. You know Harry Johnson? A. I do.

Q. He was an operator here? A. He was.

Q. Where was he operating?

A. I knew Harry Johnson in Dawson, and he afterwards came down here, and I believe he operated on 1 or 2 above of Pedro, and then I think in the winter of 1909 and 10 he operated with a man named Bibby on Goldstream; Johnson & Bibby.

Q. I will ask you to state whether or not in your opinion you regarded that as a good and safe loan in April, 1910?

A. Harry Johnson was always considered in the upper country and in the early days in Fairbanks a good risk, and was reported to have considerable valuable property in Seattle. They say he has that property to-day, but I don't know.

Q. You regarded it good at that time?

(Testimony of R. C. Wood.)

A. We did.

Q. Note number 2703, T. J. Williams and Brown, for \$100. J. W. Brown.

A. Teddy Williams I think was operating a saloon at Cleary at that time. I wouldn't be positive about it, but I think he was. J. W. Brown was a saloon keeper and ran the Eagle Saloon.

Q. Did you consider that good at that time?

A. We considered that note good. Mr. Brown afterwards sold his interest in the Eagle Saloon, and got a good deal more than that for it. [603]

Q. Adolph Rupp, notes 2761 and 2945.

A. 2945 for \$1000, 2761 for \$3300 and 3118 for \$555. Mortgage on undivided  $\frac{1}{2}$  interest in lease 4 below, first tier, right limit, Ester; also  $\frac{1}{2}$  interest machinery; also dump on Carroll & Parker fraction on Fairbanks Creek.

Q. I will ask you to state—you knew Adolph Rupp, did you not?

A. There are other memoranda here, if you want them, if I am supposed to read them all—memoranda in the book. That was the security, though.

Q. That was the security. A. Yes.

Q. What is the memoranda?

A. This mortgage was never recorded. Rupp filed a second mortgage on machinery—no good. Rupa since gave mortgage to secure all creditors, and the Fairbanks Banking Company appointed trustee.

Q. Do you know how much was realized upon that? A. No, sir. I don't know.

Q. He made an assignment for the benefit of all



(Testimony of R. C. Wood.)

of his creditors, did he not?      A. Yes, sir.

Q. You know that there was about 83 per cent that was paid on that?

A. No, I do not. I don't know anything about that.

Mr. RIDER.—Don't lead your witness so much.

Mr. McGINN.—I wanted to find out if he knew. This is a matter I can prove.

A. If I remember correctly, in 1909 and 10 he was working out on Ester, and I don't think he had failed at that time, because this pencil memorandum has been made afterwards.

Q. Wasn't he considered good at that time? [604]

A. He was considered good at that time, and always had a good standing in the community. At one time he was an owner in 2 above on Fairbanks Creek, and he was operating on Tenderfoot Creek. He had charge of heavy mining operations on Dome Creek, and was always considered a good man and a good miner.

Q. Mr. Rupp afterwards went to Iditarod?

A. So I believe.

Q. You considered that loan good at that time?

A. I believe that we did.

Q. J. C. Arnell and Headman number 2792.

A. Number 2792 for \$1273.87, signed by J. C. Arnell and Headman Mortgage undivided  $\frac{1}{4}$  interest in bench 2d tier, left limit, Little Eldorado.

Q. I will ask you to state whether or not in your opinion you regarded that as ample security for the payment of that note in April, 1910.

(Testimony of R. C. Wood.)

A. We did, yes, sir.

Q. I call your attention to note 2857 of Tharp & Rusk.

A. I have that as number 2857, April 20, 1909, for \$1000. Mortgage on 80 acres at Chatanika, and the east half of Lot 5 in Block 2 west.

Q. Was there any other security at that time?

A. The record don't show it, but I think they had considerable goods in the warehouse of the Fairbanks Banking Company. They kept a stock book at that time.

Q. What?

A. They had a record of the warehouse books at that time.

Q. Did you have a mortgage on everything that was in the warehouse to secure those notes?

A. This is in our own warehouse. We had possession of the goods. [605]

Q. Did you have possession of it to secure this note? A. That was always the understanding.

Q. There was no writing to that effect.

A. No. But they paid for the goods as they took them out. It doesn't show in the index of the book the name of Tharp Rusk & Smith, but the goods in here that I notice in the index are; Tharp & Rusk I have here on April 26, 1910, on the debit side of this book the amount of \$3,444.55. On the credit side they have, March 25, 1909, groceries in stock in warehouse \$1850.62, grocery stock in Ryan's warehouse \$512.73, harness stock in bank warehouse \$2,236.02, furniture goods in bank warehouse \$674.02,

(Testimony of R. C. Wood.)

hardware goods in bank warehouse \$339, hardware, harness, clothing etc., \$726.09. Withdrawals—it is not necessary to go all through those—the total of withdrawals amount to about \$825.

Q. What do the others amount to?

A. \$6,339.79.

Q. I will ask you to state whether or not you regarded those securities, in addition to what you mentioned before, as sufficient for the payment of the indebtedness of Tharp, Rusk & Smith in full.

A. I did, yes, sir. Tharp, Rusk & Smith had always been heavy borrowers from the Fairbanks Banking Company. They did a heavy business in 1905, 6, 7 and 8, and always had a good credit with the bank.

Q. And you considered this note good at that time on April 12, 1910?

A. In 1910, with the security we had at that time, it was good. [605½]

Q. The note of J. F. Struthers. I will not go into that, because Mr. Hurley testified he thought that was good.

Q. W. B. Morgan, \$800, note number 2990.

A. Number 2990, \$800, July 3, 1909, due on demand, W. B. Morgan. On a memorandum here; guaranteed by E. T. Barnette.

Q. And you regarded that as good—(Interrupted).

A. Yes. That was guaranteed by Barnette.

Q. —on April 12, 1910? A. Yes.

Q. Did you know A. McArthur?

A. I knew A. McArthur. He was the first man, I believe—one of the first men that opened up an ac-

(Testimony of R. C. Wood.)

count with the Fairbanks Banking Company, partnership, and I remember him for that reason. He was one of the first ones.

Q. This list shows that upon the 12th day of April, 1910, he was indebted to the Fairbanks Banking Company in the sum of \$176.00 and it shows that there is still unpaid on that account the sum of \$126. What did you know about A. McArthur?

A. I didn't know very much about him, except that he was an operator on the creeks.

Q. Did you know what kind of a reputation he bore?

A. As far as I know he had a good reputation. He never borrowed much money, and didn't seem to be in debt at all.

Q. I will ask you to state whether or not you regarded that as a good loan in April, 1910?

A. Yes, sir, we did. I think he is at Ruby to-day, but I am not sure.

Q. We have number 2941 and 3043, being notes of Don A. Frick, one for \$500 and the other for \$100.

A. I have number 2941 for \$500 and 3053 for \$100, Don. A. Frick, secured by four barrels of whiskey in the [606] Fairbanks Banking Company's warehouse.

Q. That is \$600 total?      A. Yes, sir.

Q. Do you regard that as ample security for the payment of \$600?

A. Yes, sir, we did. Four barrels of whiskey, of from 50 to 60 gallons to the barrel. And I think about the cheapest whiskey you could buy here would

(Testimony of R. C. Wood.)

be about \$3.00 a gallon.

Q. That would be from \$150 to \$180 to the barrel; and four barrels would be from \$600 to \$720. You regard that as ample security? A. Yes, sir.

Q. And so regarded it in April, 1910?

A. Yes, sir. Of course, we didn't know anything about the whiskey.

Q. You mean the quality?

A. We didn't know anything about the quality. As I understand some whiskey sells here for \$8.00 a gallon, and some for \$2.50 and \$3.00.

Q. F. Schaupp, number 2103. It shows \$1,245.81 due on that note on April 12, 1910, and paid on it \$565.21. What security had you for that?

A. We had lot 11, block 1 east. To the best of my recollection there were two buildings and one warehouse on that.

Q. Did you regard that as ample security?

A. We did at that time, yes, sir.

Q. C. E. Claypool, note number 2382, note number 3002, and note number 3455. I will ask you what that was secured by?

A. That was secured by 50 shares of stock of the Fairbanks Banking Company, 75 shares of the Tanana Electric Company, and 45 shares of Tanana Bottling Works stock, and 2 shares of the Masonic Building Association stock; also Lot 2, [607] Block 7 West, between 1st and 2d Avenues.

Q. Any building on there?

A. Yes, sir, a two-story residence on that.

Q. What did you know about the Tanana Bottling



(Testimony of R. C. Wood.)

Works stock at that time?

A. I know the Tanana Bottling Works declared a dividend very often. I know it was a very profitable business, making lots of money then.

Q. And you regarded these securities as ample to satisfy these notes, did you not, at that time?

A. I think so.

Q. C. J. Robinson, note number 2391. "At that time" I refer to April, 1910.

A. C. J. Robinson, secured by 40 shares of Fairbanks Banking Company stock.

Q. How long have you known Charley Robinson?

A. I have known Charley Robinson since 1904.

Q. He was a miner, was he, an operator?

A. Yes, sir.

Q. Where did he operate?

A. He operated on Dome, 6 below on Dome.

Q. What were his circumstances in April, 1910?

A. His standing was first-class, to the best of my knowledge.

Q. He also operated on Vault Creek afterwards, did he not? A. I don't remember.

Q. On the Oregon Group?

A. I don't remember about him operating on Vault.

Q. Charley Robinson was always a first-class risk, was he not? A. Yes, sir.

Q. I will ask you to state whether or not in your opinion you regarded that note—(Interrupted).

[608] A. I did.

Q. —as good in April, 1910? A. Yes, sir.

(Testimony of R. C. Wood.)

Q. Next we have a note of D. H. Jonas, numbered 2380 for \$3,705.96, note number 3016 for \$3,000, and note number 3017 for \$2,000. What do you find with regard to those?

A. Number 3016, \$3,000, and number 3017 for \$2,000. The above are drafts addressed to Ralph Jonas, Brooklyn, New York.

Q. Who was Dan Jonas?

A. Well, Dan Jonas was a man who came to Fairbanks in 1904—the summer of 1904. He was a saloon-keeper—went into the saloon business, he and a man named Brown. They were very successful, and I think in the winter of 1906 and 7 the firm of Jonas & Brown had a deposit with The Fairbanks Banking Company of about \$40,000, carried an account on the books, a credit balance on the books of the bank during that winter that would probably aggregate \$30,000 throughout the winter.

Mr. RIDER.—Q. What winter?

A. The winter of 1907, I think. Then he became *interested* on Vault and Treasure Creeks and mined out there, at the same time he was running the saloon business in Fairbanks. He was a prominent man in Fairbanks, public spirited, and interested himself a great deal in politics.

Mr. McGINN.—Q. I wish you would go on and tell about these drafts.

A. Ralph Jonas is the president of the Brooklyn Trust Company of Brooklyn, New York. There was a letter— He was supplying Dan Jonas with funds for the purpose of making investments in mining

(Testimony of R. C. Wood.)

property in Fairbanks. There was a letter that Dan had in his possession in which his [609] brother stated that he would allow him to draw on him, and, if I remember right, 5,000 or \$20,000. Of course, these advances were made before I was connected with these banks, but I learned this afterwards.

Mr. RIDER.—Are you reading from the book?

A. No, I am speaking from things that occurred at that time.

Mr. RIDER.—I object to that; what he learned.

Mr. McGINN.—Q. There were drafts drawn on his brother? A. So this book says.

Q. Those drafts were not paid?

A. No. They were not paid.

Q. Do you remember in about January or February, 1910, receiving any telegram from E. T. Barnette with reference to this matter?

A. Yes, we did; that is, Jackson did.

Q. You saw the telegram?

A. I saw the telegram.

Q. About what was the date of that telegram?

A. To the best of my recollection it was in January or February, 1910.

Q. Have you made inquiry and search to see whether you could find that telegram in the papers of the Fairbanks Banking Company?

A. I looked there the other day, but couldn't find it.

Q. Did you speak to Mr. Stewart about it?

A. I don't believe I told Mr. Stewart what I was

(Testimony of R. C. Wood.)

looking for, but I told him I wanted to go through the files of that period.

Mr. McGINN.—Have you got that telegram?  
[610]

Mr. RIDER.—What telegram?

Mr. McGINN.—A telegram that Barnette addressed to Jackson in January or February, 1910, relative to this Jonas matter.

Mr. RIDER.—I don't remember to have ever seen it. Mr. Wood says he went through the files.

Mr. McGINN.—Q. I will ask you to state what that telegram said?

Mr. RIDER.—We object as irrelevant, incompetent and immaterial.

The COURT.—What is the purpose?

A. That Barnette at that time wired in to Mr. Wood—

Mr. WOOD.—Not to me, but to the Fairbanks Banking Company.

Mr. McGINN.—Wired to the Fairbanks Banking Company not to take any action against Jonas; that Jonas would settle up these notes when he came in. We want to show that upon the strength of that telegram, Mr. Wood regarded these as good notes.

The COURT.—Very well. Objection overruled.

Mr. McGINN.—What was that telegram?

A. I forget the exact wording of the telegram, but it was to the effect that Jonas would pay the notes when he came back in the spring or in the summer. Jonas was interested in some copper property over in

(Testimony of James W. Hill.)

the Valdez country.

Q. With whom?

A. With Doctor Pohl. And he told me when he left that fall that the Guggenheims had agreed to send their expert to visit this property that winter.

Q. I will ask you to state whether or not in your opinion you regarded those notes as good in April, 1910?

A. We had no reason to regard them otherwise. The bank had advanced to Jonas five or ten thousand dollars on that letter, and the drafts had always been paid. [611]

Q. They had been paid prior to that time.

A. They had.

Q. O. E. Tackstrom, *none* number 2366, on which they say there is a balance of \$346.96.

A. The only memorandum I have is: A stock note 2366.

Q. Does it show how many shares of stock?

A. No. It doesn't.

Q. What do you know about Oscar Tackstrom in 1910?

A. I believe in 1910 Tackstrom was a partner of Thornton, of the firm of Tackstrom & Thornton, engaged in the clothing business here.

Q. Do you know whether or not he sold out his interest?

A. Yes. He sold out his interest to Mr. Fowle.

Q. Do you know when he sold?

A. I forget whether it was 1910 or 1911, but I think it was in 1910.



(Testimony of R. C. Wood.)

Q. He was still interested with Thornton upon the 12th day of April, 1910?

A. I think he was. If he was not interested with Mr. Thornton at that time, he was manager for the Orr Stage Company. He either left the employ of the Orr Stage Company in the spring of 1909 or 1910; I wouldn't be sure about those years.

Q. How long had he been connected with the Orr Stage Company?

A. He had been connected with Ed. S. Orr in Dawson since about 1900, or earlier than that—in 1899, I think.

Q. Do you know whether he was a partner with Orr or not?

A. Yes, I think he was a partner with Orr and Doctor Cassels in the Orr Stage Company in the upper country.

Q. You think at that time he was in partners with Thornton? A. I think he was. [612]

Q. I will ask you whether you regarded his note in the sum of \$375,00 as good in April, 1910?

A. I did.

Q. Do you know where he is now?

A. I think he is in Ruby.

Q. He afterwards went out and went into business in Oregon, did he not?

A. Yes, sir, in Medford, Oregon.

Q. Do you know how much he got for his interest with Thornton?

A. He didn't sell out to Thornton. He sold to Mr. Fowle.

(Testimony of R. C. Wood.)

Q. How much did he get?     A. I forget.

Mr. RIDER.—I think that is material.

A. It might have been \$10,000.

The COURT.—I think that is going a good ways.

Mr. MCGINN.—Q. M. H. McMullen, number 2669.

That was a stock note, *wasn't*?

A. There was one stock note. I remember that.

Q. The stock was never issued to him, I believe.

A. I don't know.

Q. What property did Mr. McMullen own at that time?

A. There were two brothers. M. H. McMullen was one brother. They were operating a lay on Goldstream, and they owned an interest in 4 above on Dome that has been worked by a man named Canning and Jackson. They have been working that for several years.

Q. Do you know whether or not that claim has produced money?     A. Yes, sir.

Q. Do you know whether or not McMullen still owns that interest?

A. I think he does, as far as I know. I know he sent me in [613] a bill of sale to deliver to a man on the payment of so much money.

Q. When was that?

A. I think that was in 1911; in 1910 or 1911.

Q. McMullen also mined on Goldstream?

A. Yes, sir, he mined there.

Q. Do you know where he is at present?

A. Well, I knew last winter. I saw him outside last winter.

(Testimony of R. C. Wood.)

Q. What is he doing?

A. He is running a hotel on the corner of First and Pike Street, Seattle, Washington.

Q. You regarded his note for \$1,000 as good—(Interrupted). A. Yes, sir.

Q. —in April, 1910? A. Yes, sir.

Q. The next is Ray Brumbaugh, number 2362, upon *there* there was due \$7,762.50, April 12, 1910; and, as this statement shows there is still unpaid the sum of \$5,431.33. What do you know about that? That note is indorsed by H. C. Hamilton,—signed by H. C. Hamilton.

A. Ray Brumbaugh, number 2362, \$7,762.50.

Q. Who was Ray Brumbaugh?

A. He was a member of the firm of Brumbaugh, Hamilton & Kellogg.

Q. What business were they engaged in?

A. They were engaged in running a machinery depot and hardware business.

Q. They afterwards sold out?

A. They afterwards sold out to the Samson Hardware Company.

Q. Do you know whether H. C. Hamilton is still interested in the Samson Hardware Company?  
[614]

A. Yes, sir, he is a stockholder. It is a corporation.

Q. In 1910 what was the condition around Fairbanks as to whether times was good, and prospects good, and business good.

A. 1909 I think was the best year that Fairbanks

(Testimony of R. C. Wood.)

had, that is, that is the largest production of gold.

Q. How was 1910?

A. 1910 was good, almost as good as the previous year.

Q. State whether or not Brumbaugh, Hamilton & Kellogg did a great deal of business?

A. In 1910 Ray Brumbaugh came up from the Iditarod and he showed me drafts that he had on the Scandinavian-American Bank of Seattle issued by the Miners & Merchants Bank of Iditarod to the extent of \$75,000 at that time from the business he had down there.

Q. That was when?      A. In 1910.

Q. Do you remember about that time?

A. It was in the fall or early winter. It was on his return from the Iditarod. I don't know but what he negotiated those drafts through the Fairbanks bank.

Q. You say he negotiated them through the bank?

A. I couldn't say that he did. I know he went outside. The books of the Fairbanks Banking Company will show that.

Q. Of course these drafts were in favor of Brumbaugh Hamilton & Kellogg.      A. I think so.

Q. Do you know H. C. Hamilton?      A. I do.

Q. You regarded the note of Brumbaugh as absolutely good in April, 1910?

A. Yes, sir. The firm of Brumbaugh & Hamilton were heavy [615] borrowers from the Fairbanks Banking Company. I think at one time they were indebted to that bank \$60,000 or \$70,000, and they paid it up. They were carrying a stock of goods on

(Testimony of R. C. Wood.)

hand that would be over \$100,000, and I presume sometime in the year it would go over two or three hundred thousand. They were doing a tremendous business in Fairbanks.

Q. What do you know about Mr. H. C. Hamilton?

A. Mr. Hamilton was a member of the firm of Brumbaugh, Hamilton & Kellogg, and at one time owned considerable valuable mining property at Fairbanks. I think he owned and still owns 8 below on Cleary, and I believe he is interested in 9, but I wouldn't be sure as to 9, but I am certain about 8, and I know there is a lay on that ground to-day, working that ground.

Q. Do you know whether or not he is interested in the steamer "Samson"?

A. He owns—Yes, they own the steamer "Samson."

Q. You regard that note as good, do you?

A. Yes. That note is good now.

Q. Do you know anything about any property they own over on Birch Creek?

A. I know they had an option on what they call Harrison Creek claims. I know they made trips over there to investigate the property.

Q. The next item is number 2203 note of John Collins \$150, I will ask you to state whether or not that was a stock note.

A. Yes. That was a stock note. [616]

Q. For two shares of stock?

A. It doesn't say. It says; Stock note.

Q. Do you know whether or not he paid anything on his stock note?



(Testimony of R. C. Wood.)

A. I have here; April 16th, paid \$2.50 on the original note.

Q. The stock would be of the par value of \$200.

A. Yes, I think he paid \$50 on it.

Q. I will ask you to state whether you regarded that stock in April, 1910—(Interrupted.)

A. Yes. We did.

Q. —as good security for that? A. Yes.

Q. This note of F. B. Brazeau number 1435 was for \$400. I think that has been pretty well covered. On that note on April 12, 1910 there was due \$400, and it still shows that there is a balance of \$102. I think that has been sufficiently covered. The next is number 1240, Harry Cribb for \$1001.60. I will ask you to state whether or not you regarded the note of Harry Cribb—(Interrupted).

A. Yes.

Q. —good at that time for the sum of \$1000?

A. Yes. Harry Cribb was easily worth that money. He was good.

Q. What property did he own at that time?

A. He owned the Gordon Glass Block.

Q. Right up here on Cushman Street?

A. Yes, sir. And he owned his home up there that Herpick lives in at present, and he had a big stock of goods.

Q. What business?

A. Glass, sash and door, and wallpaper.

Q. You regarded his note as good in April, 1910?

A. Absolutely good. [617]

Q. Edgar Cathcart. What does your record show in regard to that?

(Testimony of R. C. Wood.)

A. It shows that there was a deed of lot 3, block 5 east, corner 4th and Hall; and that afterwards the cabin was destroyed by fire.

Q. You don't know when the cabin was destroyed?

A. Yes, it was destroyed the 22d of February, 1910.

Q. Do you know what the lot was worth at that time? A. No. I do not.

Q. But you knew Ed. Cathcart?

A. Yes, sir. I knew him.

Q. State whether or not you believed this note was good.

A. I think the lot on the corner of 4th and Hall would be worth \$200. I think it would be worth that to-day.

Q. How about Cathcart himself?

A. I didn't consider Cathcart very good at that time.

Q. You depended upon the security.

A. Upon the security.

Q. F. Allberg, \$66.53. This still shows unpaid \$33.28.

A. That is Frank Allberg of the Tanana Bottling Works?

Q. Yes.

A. He has always been in a position to pay that. He just came back from a trip to Europe.

Q. You regarded him as good pay?

A. Yes, sir. And he is good to-day.

Q. Now, the note of W. Sam Clark; 1403, 1495 and 1528.

A. Number 1403 for \$800, W. Sam Clark; 1495 for

(Testimony of R. C. Wood.)

\$250, R. H. Stafford; number 1528 \$1000, R. H. Stafford. It shows here; were indorsed secured by Stafford.

Q. Anybody else?

A. My record don't show anybody else. [618]

Q. Doesn't it show the indorsement of Frank Mates?

A. No. This record doesn't show that.

Q. Who was R. H. Stafford?

A. He was a prominent mining man in Fairbanks, and made considerable money in the early days.

Q. Do you know whether or not these notes were afterwards indorsed by John A. Clark?

A. I don't remember. Mr. Clark told me that he afterwards indorsed them.

Q. These were the notes that were spoken of here yesterday?

Mr. RIDER.—Yes. That was all threshed out yesterday.

Mr. McGINN.—Q. Who was R. H. Stafford?

A. He was a prominent mine operator here and made considerable money.

Q. I will ask you to state whether or not at one time he was interested in the claim called 3 below on Dome Creek?

A. Yes, sir. I believe he was in that litigation.

Q. Do you remember how much he received for his interest in that?

A. I think we paid him the money, but I forget; something like \$10,000, I think.

Q. What was the standing of Mr. Stafford in this community as to honesty, integrity and uprightness?

(Testimony of R. C. Wood.)

A. Good, so far as I know.

Q. I will ask you to state whether or not you regarded those notes as good in April, 1910?

A. Yes, sir, those notes were good.

Q. There is note 2017 A. R. Heilig and Leroy Tozier, for the sum of \$500, on which they say there is now \$135.04 still unpaid. I will ask you to state whether you considered the note of A. R. Heilig and Leroy Tozier for the sum of [619] \$500 as good on April 12, 1910? A. I did. Yes, sir.

Q. The next is number 2076 note of John Moe and Schroeder for \$180, upon which they say there is a balance of \$37.50 still unpaid. Who was John Moe?

A. John Moe is a saloon keeper in Fairbanks.

Q. And who is Schroeder?

A. Schroeder was a partner of his at that time.

Q. Where has John Moe been engaged in business for the last couple of years?

A. At the Mecca, corner of 4th Avenue and Cushman Street.

Q. It was destroyed by fire last winter.

A. Last winter. Yes, sir.

Q. I will ask you whether or not you considered the note of John Moe and Schroeder in the sum of \$180 as good on April 12, 1910?

A. I certainly did.

Q. It is still good, isn't it? A. Still good.

Q. I refer you to the note of William Barrett, number 1975 upon which they say there is a balance of \$8,809.21, and ask you to state what that was secured by?

A. 1975 secured by assignment of insurance poli-

(Testimony of R. C. Wood.)

cies now in course of collection. Deed lot 2 block 1 east between 3d and 4th.

Q. That is this warehouse over here.

A. Yes. The Barrett warehouse.

Mr. RIDER.—Q. What note was secured by the insurance?

A. I have it, number 1975, \$9,312.71. Following that: note number 3170 for \$73.45, and notation “insurance expenses” after. [620]

Q. After that last note?

A. After the last, \$73.45. That was paid on February 3, 1910. That is the expenses that were paid.

Q. Do you know whether 1975 was secured by that insurance?

A. I have followed these notes with the descriptions appearing underneath them, and that is what it was secured by; that is the record.

Mr. McGINN.—Q. The bank haven’t a deed to that real estate?

A. They had a deed at the time this book was made out, a deed to lot 2 in block 1 east.

Q. Do you know what would be a fair and reasonable value of that property in April, 1910?

A. The only thing that I can say about that is that I was acquainted with Charley Suter at that time, and he was—renting the property, and he told me he was going to try and buy it from the Fairbanks Banking Company. I went to them and I believe they told me they wanted \$6,000 for the property then.

Mr. McGINN.—I want the minutes of January 2, 1909. In this connection we desire to introduce in



(Testimony of R. C. Wood.)

evidence a portion of the minutes of the executive committee of the Fairbanks Banking Company held at 3 P. M. at the office of the Corporation, Fairbanks, Alaska, James W. Hill, vice-president— (Interrupted).

Mr. RIDER.—That is objected to as irrelevant and immaterial.

Mr. McGINN.—I want to show the value of that property in 1909.

The COURT.—You may introduce it, but it is a long way off.

Mr. McGINN.—(Reads):

“Fairbanks, Alaska, January 2, 1909. It was reported to the committee that Charles Suter desired that the bank place a sale price on the Barrett property on [621] 3d Avenue. It was the sense of the meeting that this property should not be sold for less than \$6,000.”

I desire also to read (Reads):

“The question of renting the Royal Hotel to the postoffice should an opportunity present itself was discussed. It was the sense of the meeting that the rental should not be less than \$125 per month as the property stands.” Then the meeting of the board of directors held on January 12, 1909, at which they ratify the action of the executive committee.

Mr. RIDER.—The same objection to that.

The COURT.—The same ruling.

Mr. RIDER.—I will admit there is an entry there ratifying it, if you say it is there.

Mr. McGINN.—Q. I will ask you to state whether or not, in addition to this property, Mr. Barrett had

(Testimony of R. C. Wood.)

goods, wares and merchandise that was placed with the Fairbanks Banking Company at that time.

A. Well, this record doesn't say that at all. I know that the bank—whether that was in 1909 or 1910—the Fairbanks Banking Company had put Mr. Peck as custodian of goods that Barrett held in his own warehouse at that time, and that afterwards Barrett was permitted to take these goods to the Iditarod or Innoko.

Q. You don't know whether that was in 1909 or 1910.

A. No. I don't remember what year it was.

Q. Have you a record of it?      A. No.

Q. A. H. McNeer, note number 2556.

A. Well, I have; number 2556 for \$1592.33. Mortgage on 11 horses, 5 wagons, etc. [622]

Q. I will ask you to state whether you regarded that 11 horses and 5 wagons as amply security for payment of the sum of \$1,592.33 in April, 1910?

A. I certainly would, as far as I know.

Q. This Barrett loan of \$8,809.21 was charged off in December.

A. There was a Barrett loan— (interrupted).

Mr. RIDER.—Not this one. That was another one.

A. There was a Barrett loan of something like \$8,000 charged off in December, 1909.

Mr. McGINN.—Q. But you regarded this as ample security at that time?

A. Yes, sir. Those insurance policies were in the course of collection. There was almost \$17,000 worth of insurance being collected at that time.

(Testimony of R. C. Wood.)

Q. Light & Haggerty— Before going to that. Now, you had, in addition to that, this building?

A. This building over here.

Q. What do you know about Billy Barrett?

A. Billy Barrett came to Dawson, I think, in 1898 and was *interest* with Barrett & Hull there, at one time one of the largest commission men in Dawson, and one of the best rustlers that ever came to the country. He is now with the New York Life Insurance Company, and I understand is the general manager's right hand man; at any rate, his name appears on the head of their stationery.

Q. He was burned out here in 1906?

A. In the fire, yes, sir.

Q. And afterwards went to the Iditarod and burned out there too?

A. He represented here that he was burned out, yes. [623]

Q. He was burned out again in the Iditarod?

A. Yes, I think he was burned out again.

Q. Note number 2667 note of R. R. Myers for \$1,000. I don't think you have any security for that. That is Doctor Myers the dentist?

A. That is Doctor Myers, the dentist. There is no security.

Q. You regarded him in April, 1910, as worth the sum of \$1,000.

A. I still say he is good for \$1,000.

Q. And you so regarded him then?

A. Yes, sir.

Q. John F. Baird, number 2702. I don't believe that note is secured. Hurley testified that was good.

(Testimony of R. C. Wood.)

Did you regard that good in April, 1910?

A. Yes, sir.

Q. T. L. Thurston, number 2755, for \$950. What security, if any, did you have for that in April, 1910?

A. That was secured by a mortgage. I have that; No. 2755 for \$950. An indorsement on April 19th of \$100. Mortgage lot 9, block 1, East, between 3d and 4th.

Q. Do you know that property? A. Yes, sir.

Q. I will ask you whether you consider that worth \$950? A. Yes, sir, easy.

Q. A house over here on 3d Avenue?

A. On 3d Avenue, yes, sir. [624]

Q. You regarded that as good in April, 1910?

A. Yes, sir.

Q. W. M. Anderson, note number 2932.

A. I have 2932 and 2933.

Q. This just refers to 2932. What have you with regard to that?

A. I have. Secured by order for \$2,000 on merchandise.

Q. Do you know where this merchandise was situated?

A. This record doesn't show it, but it was situated in the Tanana Valley Railroad Company's warehouse at that time.

Q. Did you regard that as ample security—

A. Yes, sir.

Q. —at that time in April, 1910— A. Yes.

Q. —for the sum of \$850? A. Yes, sir.

Q. Now, there is a draft Scandinavian-American Bank, number 2946 for \$575. I wish you would ex-

(Testimony of R. C. Wood.)

plain about that.

A. In December of 1907 at the time the Fairbanks Banking Company suspended, there was a man named Drouin who had purchased a draft from the Fairbanks Banking Company on the Scandinavian-American Bank. When it was presented in Seattle, payment was refused. The banks were on a scrip basis, and payment of the draft was refused by the Scandinavian-American Bank. When I arrived in Seattle in December, 1907, I met this man Drouin and he wanted some money. So I told him I could give him \$500 then on the draft. He said that would be sufficient at that time. So I took the draft—Mr. Drouin and I went to the American Savings Bank & Trust Company, and he indorsed the draft, and I placed it in escrow with that bank, with the agreement that if Mr. Drouin should deposit \$500.00 to the credit of the Fairbanks Banking Company they should [625] deliver him the draft back again and remit the \$500 to the Fairbanks Banking Company, Later on, when the credit had been given to the Fairbanks Banking Company by Dexter Horton, by which they were able to take care of all those outstanding drafts which at that time amounted to two or three hundred thousand dollars, Mr. Drouin went up to the American Savings Bank and Trust Company and took this draft from them, and they neglected to get this \$500 that had been paid on it. Afterwards a claim was made by the Fairbanks Banking Company upon this American Savings Bank & Trust Company for the money, and this was in the course of collection at that time.



(Testimony of R. C. Wood.)

Q. This seems to be the Scandinavian-American Bank?

A. It was a draft drawn on the Scandinavian-American Bank.

Q. And this was in the course of collection at that time?      A. Yes.

Q. And you regarded it as good?

A. We couldn't see why the American Savings Bank & Trust Co. wasn't liable for it. It was left with them in escrow, with instructions to deliver it to Drouin when he paid \$500, or deposited the \$500 to the credit of the Fairbanks Banking Company; and they delivered the draft and neglected to collect the \$500. The draft was either for \$1,000, or it might have been for \$1,500. I don't remember the exact amount. But that was the transaction at that time.

Q. Here is a note number 2960, S. D. McIlroy, known as "Tex McIlroy" for \$100.

A. I don't think that that was secured. I see no notation here of any security.

Q. State whether or not you regarded Tax McIlroy at that [626] worth the sum of \$100?

A. Yes, sir.

Q. That is, in April, 1910?      A. Yes, sir.

Q. Did he have any property?

A. He owned an interest in the Chatham Mining Company, and afterwards he was paid three or four thousand dollars in cash for his interest in that property.

Q. Do you know when he was paid that?

A. I think it was in 1911.

(Testimony of R. C. Wood.)

Q. Or 1912?

A. It might have been in 1912. I don't remember the year.

Q. L. S. Robe, \$750. Who was Mr. Robe?

A. Mr. Robe was a civil engineer. He had been in the employ of the North American Transportation & Trading Company at Dawson and Fortymile for some years prior to his coming to Fairbanks, which I think was about 1905. I have here: Number 3075 secured by orders on Townsite Trustee for surveying.

Q. He surveyed the townsite here?

A. He surveyed this townsite.

Q. State whether or not Mr. Robe was a man of considerable earning capacity.

A. He is a very responsible man. He is considered capable, and has always held—that is, he held a great many very responsible positions. I think his position with the N. A. T. Company was such that they depended a great deal upon his judgment and work in purchasing mining property.

Q. I will ask you to state whether or not you collected notes from him after this time, and in the Iditarod? A. Yes, sir. I did. [627]

Q. He went to Iditarod when?

A. He went to Iditarod, and we sent a note down to the Miners & Merchants Bank in the Iditarod, and he paid it.

Q. Did you consider that note of his good in 1910?

A. Yes, sir. It was good.

Q. Note number 3094 of T. C. Brown for \$600. It shows still unpaid on this statement the sum of \$502.

(Testimony of R. C. Wood.)

A. I have that note dated March 17, 1909, due March 17, 1910, for \$600. Payment made of \$94; secured by 7 shares of Fairbanks Banking Company's stock.

Q. Who was T. C. Brown?

A. T. C. Brown was a carpenter in the employ of the Northern Commercial Company.

Q. How long had he been in their employ?

A. I don't know. Several years.

Q. He had paid for his stock in the Fairbanks Banking Company?

A. He had as far as I know, yes, sir.

Q. What was his standing in this community?

A. His standing was good.

Q. I will ask you to state whether or not, taking into consideration the moral risk as well as this security, you considered Mr. T. C. Brown good for that amount in April, 1910?

A. We did, and I think that the records of the bank will show that Mr. Brown had been accommodated several times before without security, and always paid his bills.

Q. E. M. Keyes, number 3103.

A. Number 3103, \$2500.

Q. Who was Mr. Keyes?

A. Mr. Keyes is a prominent mine operator on Cleary Creek. He has been there since about 1905 or 1906. [628]

Q. And what was his standing in the community in 1910?

A. His standing at that time was good.

(Testimony of R. C. Wood.)

Q. Do you know where he was operating in 1910 in April?

A. In 1910 he was operating on the lower end of Cleary. I wouldn't be sure on what claim. Last year he was operating on 17 below on Cleary.

Q. Was he considered good in 1910 for that amount? A. He certainly was.

Q. Did you regard that as a good note in April, 1910?

A. I did, yes, sir. I have a notation here: "P. M. Rettig." I wouldn't say Rettig was on the note or not, but Mr. Rettig is a partner to-day and was at that time, I believe, a partner of Mr. Keyes.

Mr. McGINN.—Have you got that note?

Mr. RIDER.—No, sir. That note was taken up. Reddig's name was not on the note.

Mr. McGINN.—Q. J. Albert Jackson note of \$500, April 12, 1910, on which they say there is \$333.71 unpaid.

A. That was dated the same day the dividend was declared. It was considered good at that time, and is good to-day.

Q. The note is dated November 15th.

A. I thought he said April 12, 1910.

Mr. RIDER.—The note is dated November 13, 1909.

Mr. McGINN.—Q. Mr. Jackson was the cashier, was he not?

A. Yes. He was the cashier.

Q. Of the Fairbanks Banking Company. And what salary was he getting?

(Testimony of R. C. Wood.)

A. He was getting \$400 a month.

Q. In addition to that did he own any stock of the Fairbanks Banking Company?

A. Yes, sir. I think he owned 5 shares. [629]

Q. Does the record show there in that respect?

A. It says: Note given for 5 shares of F. B. Co. stock.

Q. That is the note that was given for the stock?

A. Yes, sir.

Q. Does it show that there had been any payments made?

A. Yes, sir. It shows that on April 16th there was a payment of \$75.

Q. What other payment, if any?

A. That is all that is shown on here.

Q. You regarded that note good on April 12, 1910?

A. Yes, I regard that note good.

Q. He continued there until the bank closed?

A. Yes, sir.

Q. The bank could have withheld his salary at any time in payment of that? A. They certainly could.

Q. The next are notes numbers 1304, 2099, 2115 and 506, the Sorenson notes, aggregating \$1889.69 at the present time unpaid.

A. I don't believe that those notes appear here at this time. I think the bank had a mortgage on some property in town, and foreclosed that mortgage, and carried it in Real Estate No. 2 account in the books.

Q. What property was that?

A. It was property known as the Royal Hotel. It



(Testimony of R. C. Wood.)

is on Front Street, next to Abe Stein's store.

Q. Who were the Sorenson Brothers?

A. The Sorenson Brothers were two brothers that came to Fairbanks I think in about 1905, and opened up a restaurant I think and a store also—I wouldn't be sure about the store, but I am positive about the [630] restaurant. And they did a great deal of business with the Fairbanks Banking Company. And they afterwards went to Cleary, I believe, and opened up a restaurant. At that time they were considered good, that is, at the time they were doing business with the bank they were considered good. They were a good moral risk, and men of good earning capacity.

Q. Do you know whether they owned any property at Cleary?

A. I think they owned their restaurant building there, and I think they had some ground out on Ester Creek, and I think they worked and mined there one year.

Q. How many brothers were there?

A. I remember two. One was named Sufus and one was named Neil.

Q. Do you know what that note was carried for, and what the real estate was carried for?

A. No, I don't remember. I would have to look up the books for that.

Q. Could you determine that fact, say on April 12, 1910?

A. (Examines book.) It was carried at that time at \$3968.28.

(Testimony of R. C. Wood.)

Q. The notes at that time were not carried as an asset? A. No, sir, not that I know of.

Q. From what you know of that property it is situated down on First Avenue near Wickersham Street, is it not? A. Yes, sir.

Q. I will ask you to state whether or not in your opinion that property was worth that amount in April, 1910.

A. I think it was. It afterwards sold for \$3300.00 this past year.

Q. Do you know that it sold for that amount? [631]

A. No, I wouldn't swear that it sold for that amount, but I think that was the amount that it sold for. Mr. Stewart would know about that.

Q. You regarded it as of that value in April, 1910?

A. Yes. I don't know whether there was a deficiency judgment gotten against the Sorenson Brothers at that time or not, but there might have been. That would have had some value too.

Q. The only value that you carried was the real estate value. A. Yes, sir.

Q. The next is number 3230, John Hedman, \$250; April 12, 1910, still unpaid \$95.67. What was that secured by, if anything?

A. I have here: Note number 3015 for \$105, signed by Hedman and Ruth, and another note 3230 for \$250 signed by John Hedman. The first note of Hedman and Ruth was marked, paid February 3, 1910, and that was secured by mortgage on 250 cords of wood, 12 horses on Ester Creek.

(Testimony of R. C. Wood.)

Q. What was wood worth on Ester Creek at that time?

A. Wood in the hills would be worth about \$4.00 a cord.

Q. I will ask you whether or not you regarded that security as ample for this note of \$250 in April, 1910?     A. We certainly did.

Q. In going over these matters, I have not referred to the Tanana Electric Company. What was the Tanana Electric Company?

A. The Tanana Electric Company was a corporation organized for the purpose of supplying light and power to the miners on the different creeks. They installed a plant there at the mouth of Cleary Creek, and afterwards I [632] believe moved it about two miles to the mouth of Poker Creek.

Q. Do you know who the president of the Tanana Electric Company was?

A. I think Mr. C. E. Claypool.

Q. Or was he vice-president?

A. I guess Mr. Chilberg was president, and Claypool vice-president.

Q. Ed Chilberg of Seattle?     A. Yes.

Q. I will ask you to state whether or not Chilberg came to Fairbanks in 1906 or 1907?

A. I think it was in 1906 that he came here in company with Mr. Nichol, who I believe at that time was president of the fair.

Q. What was done by him at that time in the way of interesting local people in the Tanana Electric Company?

(Testimony of R. C. Wood.)

A. He circulated a subscription list in Fairbanks upon which was subscribed \$70,000 worth of stock, as near as I can remember. One of the conditions of that subscription was that Mr. Chilberg agreed to borrow, for the purpose of installing turbines and water plant on Poker Creek, the sum of \$100,000.

Q. Did he agree to borrow that, or did he agree to advance that?

A. He agreed to borrow it, as near as I can remember. He agreed to secure a loan for the Tanana Electric Company. I think that was it.

Q. Do you know whether or not there was a mortgage at that time executed by the Tanana Electric Company to the Scandinavian-American Bank?

A. It was that time or shortly afterwards that there was a [633] mortgage executed by the Tanana Electric Company for \$100,000 for all their purposes.

Q. How much of this subscription money was paid?

A. There was \$40,000 paid in cash by different subscribers in Fairbanks, which was remitted to the Scandinavian-American Bank in the fall of 1906 or winter of 1907. And Mr. Richmond subscribed \$25,000 stock in the concern, and his transactions were made directly with the Scandinavian-American Bank. I don't know whether he paid cash.

Q. What arrangement, if any, was made by Mr. Chilberg to have the Scandinavian-American Bank and the Fairbanks Banking Company advance money to the Tanana Electric Company?

(Testimony of R. C. Wood.)

A. Mr. Chilberg left an order to the effect; for the Fairbanks Banking Company to advance money from time to time to the Tanana Electric Company as they needed it, and that the Scandinavian-American Bank would transfer credits from time to time to take up the advances that were made by the Fairbanks Banking Company.

Q. Just state what the Fairbanks Banking Company did in pursuance to that.

A. As soon as Mr. Hutchinson was sent in here by Mr. Chilberg—

Q. He was manager of the Tanana Electric Company?

A. He was manager of the Tanana Electric Company, and in installing this water plant and moving the machinery and the plant it took a great deal of money, and Mr. Hutchinson drew checks on the Fairbanks Banking Company on Fairbanks, also on their branch bank at Cleary, and, when this amount reached the sum of \$18,500, the Fairbanks Banking Company telegraphed Mr. Chilberg or the Scandinavian-American Bank, and he wired back a credit for them. Then they kept on advancing this money until they had reached another [634] sum of \$25,000, and the bank wired them about that, and he wired a credit for that. They then continued making these advances until the fall of 1907 when the amount reached approximately \$30,000. At this time Mr. Richmond—or before this time in the fall, on the last boats, Mr. Richmond went to Seattle. He was manager of the Tanana Electric Company



(Testimony of R. C. Wood.)

at that time. He told us before he left—I believe a note was executed by the Tanana Electric Company in favor of the Scandinavian-American Bank for the sum of \$56,500, or it might have been more, but it was to take up the balance due on the mortgage, and credit was to be transferred from Seattle to the Fairbanks Banking Company. This amount reached \$30,000, and, when Mr. Richmond arrived in Seattle, he wired to Mr. Wilson, who was the secretary of the Tanana Electric Company, that Chilberg was in New York, and that matters would be arranged upon his return. The bank then later on wired Mr. Chilberg that they had made these advances, and requested him to telegraph a credit. In answer to that, Chilberg wired back to advance nothing more to the Tanana Electric Company. In the meantime Chilberg, or the Scandinavian-American Bank, had advanced, as near as I can remember, to the Fairbanks Banking Company against this credit possibly ten or eleven thousand dollars.

Q. How long did that credit with the Fairbanks Banking Company stand, as far as you know?

A. As far as I know, it stands to-day.

Q. Was it standing there on the 12th day of April, 1910?

A. Yes, sir.

Q. Did they ever make any demand on the Fairbanks Banking Company for that \$10,000?

A. Not that I know of. [635]

Q. Now, you went out in November, 1907?

A. Yes. I went out in November, 1907.

Q. What steps, if any, did you take toward secur-

(Testimony of R. C. Wood.)

ing the collection of this amount?

A. Well, I went first to Mr. Wolfolk, who was assistant cashier of the Scandinavian-American Bank, and asked him if Mr. Chilberg had put through the credit to the Fairbanks Banking Company. He said no, he had not, but he expected he would; that advances had been made against some drafts that had come in, and he said he was anxious to have the credit go through so he could know where the credit was, as drafts of the Fairbanks Banking Company were being presented to him and he didn't know what to do with them. I took the matter up with Mr. Chilberg, and he said that, owing to conditions that existed at that time, and the panic that was on, it was impossible for him to advance the credit at that time. He said that if I cared to, I could go before the board of directors of the Scandinavian-American Bank.

Q. What did he say in regard to the payment, or knowledge of the payment?

A. He simply said he was not in a position to pay it. He never disputed the amount in any way. And when I appeared before the directors of the Scandinavian-American Bank and told them all about it, they said: Everything is up in the air, and the Miners & Merchants Bank of Nome has drawn against us for \$700,000, and this panic going on, we can't listen to any proposition of that kind at present.

Q. Did you place the matter in the hands of an attorney there?

(Testimony of R. C. Wood.)

A. Yes. We were anxious to have these outstanding drafts paid at that time, and I went to Kerr & McCord. [636]

Q. Did you lay the matter before them?

A. Yes.

Q. What did they advise you?

A. Mr. McCord and I went down and had a talk with Chilberg in his office in the Scandinavian-American Bank, and the only satisfaction we could get out of them was that he was not in a position to pay the money. McCord said: "The Fairbanks Banking Company needs this money to pay these drafts, and, unless you can pay them, we will start suit tomorrow." Chilberg didn't say anything, and we walked out of the office.

Q. What did Mr. McCord, after you put the facts before him, advise you as to the probability of collecting this money?

A. He said there would be absolutely no question of recovering it.

Q. Why didn't you continue to proceed with it?

A. Well, I wired—the reorganization of the bank was going on here, and I wired them here—I thought it better not to proceed with this lawsuit on my own responsibility, so I wired, and they wired back not to. I wired and told them I intended to institute suit in the morning or the next day, and a short time afterwards they wired back not to do anything until further advised, or something to that effect.

Q. I will ask you whether or not in April, 1910, knowing the facts as you did, and the advice you re-

(Testimony of R. C. Wood.)

ceived, you believed this was a good and valid claim existing against the Scandinavian-American Bank?

A. I considered it just as good then as I did in 1908.

Q. What were the earnings of the three banks here in the year 1909? [637]

A. The earnings of the three banks were \$131,-332.91. That was from the 1st of January, 1909, to the 31st of December, 1909.

Q. When you went over this list with Jackson of the loans of the Fairbanks Banking Company, there were a great many more notes than what I have read to you here? A. Oh, yes.

Q. You and Jackson thought that all of the notes, except those that you charged off at that time, were good.

A. We believed we charged off all bad notes that existed at that time.

Q. And you went through the securities and notes of the Washington-Alaska Bank with Wesch, and charged off all the notes that you thought were bad as to the Washington-Alaska Bank in December, 1909? A. Yes, sir, we did.

Q. When the directors of the Fairbanks Banking Company declared this dividend upon the 12th day of April, 1910, did they do so upon the basis of the standing of the bank at the time of the closing of the books for the year ending December 31, 1909?

Mr. RIDER.—We object as leading.

The COURT.—State what it was based on.

A. On the close on December 31st of the fiscal year, in every instance.

(Testimony of R. C. Wood.)

Mr. McGINN.—Q. Is that also true in regard to the Washington-Alaska Bank?

A. Yes, sir, the profits. The expenses are all deducted from the revenues on December 31, 1909, and a balance of profit is placed in what they call the Undivided profit account. And a dividend was declared upon the showing of the Undivided profit account. [638]

Q. You were a member of the board of directors of the Washington-Alaska Bank? A. I was.

Q. I will ask you to state whether or not the Washington-Alaska Bank of Washington declared a dividend in April, 1910.

A. They declared a dividend in March or April.

Q. Who constituted the board of directors at that time?

A. There was Mr. L. L. James, Mr. Barnette, Mr. Wesch, Mr. Reeves and myself.

Q. Declared a dividend of \$50,000?

A. Of \$50,000.

Q. The Fairbanks Banking Company at that time owned all of the stock of the Washington-Alaska Bank. A. Yes, sir.

Q. To whom was this dividend paid?

A. To the Fairbanks Banking Company.

Q. The stockholders? A. Yes, sir.

Q. What disposition was made of this \$50,000?

A. \$25,000 was placed in the undivided profit account of the Fairbanks Banking Company, and \$25,000 was placed to the credit of the stock account.

Q. That is, the stock of the Washington-Alaska



(Testimony of R. C. Wood.)

Bank was depreciated \$25,000?     A. \$25,000, yes.

Q. What did the books from that time on carry the stock of the Washington-Alaska Bank for as long as you were there?     A. \$225,000.

Q. Why was that stock only depreciated \$25,000?

A. They considered that the Washington-Alaska Bank was worth that much at that time. [639]

Q. What was the book earnings or book value of the Washington-Alaska Bank at the close of the fiscal year of 1909?

A. After charging off their bad debts on that year, there was a book value of \$206,106.97.

Q. Did that take into consideration earned interest?     A. No, sir. It did not.

Q. Did you estimate, or can you approximate at all, and tell us, about what the amount of earned interest was on April 12, 1910, of the Washington-Alaska Bank, which was not carried as an asset?

A. I should think it would be \$25,000 or \$30,000. It might be more than that. I don't think it was any less.

Q. Would you say that you thought at that time that the bank was worth \$225,000?     A. Yes, sir.

Q. Was the \$25,000 of this dividend that you say was put into surplus and undivided profit account of the Washington-Alaska Bank—

A. Into the undivided profit account of the Fairbanks Banking Company.

Q. And that showed, then, how much to the credit of the undivided profit account of the Fairbanks Banking Company?

(Testimony of R. C. Wood.)

A. Well, the undivided profit account of the Fairbanks Banking Company shows on April 13th a credit of \$34,974.78.

Q. Upon what did the directors of the Fairbanks Banking Company declare a dividend?

A. On their undivided profit account.

Q. And what per cent did they declare at that time upon the outstanding stock?

A. Twenty per cent of the outstanding stock.  
[640]

Q. Do you remember what that amount was?

A. I think it was \$33,720.

Q. How much less than what the books showed upon the 13th was carried in the Undivided profit account of the Fairbanks Banking Company?

A. \$1,254.78.

Q. Less than what they carried in that account.

A. Yes, sir.

Q. Now, I will ask you, Mr. Wood, what was done at the meeting of the directors at the time that dividend was declared in determining whether or not they should declare a dividend.

A. Well, at that time I presented statements of the three institutions to the board of directors.

Q. Statements of what date?

A. Statements of December 31st, 1909. Told them that we had charged off what we considered bad debts that were in the banks, and that *their* remained in the undivided profit account something like \$34,000.

(Testimony of R. C. Wood.)

Q. And the directors thereupon declared the dividend.     A. Yes, sir.

Q. Have you got the statements of the three banks as of date December 31, 1909?

A. Yes, sir. (Produces papers.)

Q. Were those statements presented to the board of directors at that time?

A. Their statements were presented, or copies of them.

Q. At that time the Fairbanks Banking Company was carrying the Gold Bar Lumber Company at the sum of \$341,949.     A. Yes, sir.

Q. You were one of the directors.     A. I was.

Q. I will ask you to state whether or not at that time you [641] believed that Gold Bar was worth the sum of \$341,949?

A. We had no reason to believe any other way. We were submitted statements by the manager of the Gold Bar Lumber Company every month. Captain Barnette had come in from the outside with glowing reports of the concern. He said the timber was increasing in the neighborhood all the time.

Q. That it was increasing in the neighborhood?

A. That the value of timber was increasing in the neighborhood.

Q. You had received communications from outside people, too, had you, in regard to it?

A. Yes, sir. We had received communications from Dexter Horton Company; and I think the National Bank of Commerce advanced credits

(Testimony of R. C. Wood.)

against Gold Bar in excess of \$300,000.

Q. Did they have any security other than the Gold Bar stock?

A. Not that I know of.

Q. Can you tell me the amount that Dave Yarnell, who was one of the directors, had upon deposit on the 12th day of April, 1910?

A. On the 12th day of April, 1910, Dave Yarnell had \$142,325.10.

Q. With the Fairbanks Banking Company?

A. With the Fairbanks Banking Company.

Q. How much did the Jessons—John A. Jesson was a member of the board of directors—How much did the Jessons have upon deposit at that time?

A. L. N. Jesson had \$9,696. The Jesson Brothers had \$922.76. Jesson & Conrad had \$1,147.16.

Q. That is in the ordinary account.

A. They had savings accounts too.

Q. What did they have in the savings account?

A. I don't know where the savings books are.

[642]

Mr. McGINN.—I would like to have that book.

Mr. RIDER.—Have you them, Mr. Stewart?

(Mr. Stewart goes after books required.)

Mr. McGINN.—Q. How much did E. T. Barnette have on deposit at that time?

A. He had about \$292,000.

Q. Would that include his special deposit of \$200,000? A. Yes, sir.

Q. How much did John L. McGinn have to his

(Testimony of R. C. Wood.)

credit on that date?

A. In his current account or commercial account he had \$1511.29. There is savings accounts also.

Q. You haven't those here? A. No.

Q. C. J. Robinson. How much did he have to his credit on that date?

A. No, he didn't have anything at that time. He owed the bank \$184. On June 4th Mr. Robinson had \$4,653.33. On June 1st \$4,873.33.

Q. At that time you were carrying on the First National Bank. A. Yes, sir.

(Mr. Stewart returns and hands books to witness.)

A. On April 12, 1910, E. R. and L. N. Jesson had on deposit in the savings account \$65,561.03. On April 12, 1910, Mrs. L. N. Jesson had to her credit \$12,449.43 in the savings account. On April 12, 1910, John L. McGinn had on deposit in the savings account \$60,000.

Mr. McGINN.—I desire to read in evidence a portion of the minutes of the meeting of the board of directors of the Fairbanks Banking Company held upon the 12th day of April, 1909 (Reads): [643]

“Fairbanks, Alaska, April 12, 1909. Regular monthly meeting of the board of directors of the Fairbanks Banking Company was held at the office of the corporation at Fairbanks, Alaska, at 8 P. M. E. T. Barnette, president, presiding. B. R. Dusenbury, secretary, present. Members present: Claypool, Robinson, Brumbaugh, Hill, Barnette, Jesson, Yarnell and Peoples.



(Testimony of R. C. Wood.)

Discussion as to the advisability of selling the Gold Bar property was had in full and it was the sense of the meeting that the same be sold for \$450,000, with \$100,000 cash payment, and the balance payments at \$50,000 every three months until paid. The officers were instructed to so advise Mr. Armstrong, manager, and advise also that it is desirable that he place the property in the hands of responsible timber land agent for disposal."

Now, I desire to read from the minutes of the board of directors of August 12, 1909 (Reads):

"Fairbanks, Alaska, August 12, 1909. Regular monthly meeting of the board of directors of the Fairbanks Banking Company was held at the office of the corporation, at Fairbanks, Alaska, at 8 o'clock P. M.

E. T. Barnette, president, presiding. B. R. Dusenbury, secretary, present. Members present: Robinson, Hill, Brumbaugh, Ryan, Barnette.

A communication from Gold Bar Lumber Company dated July 24, 1909, enclosing monthly report of June, was read and ordered filed. A telegram from the same company, under date August 12, 1909, referring to sale of Gold Bar property and asking for price and terms was read and ordered filed. The board discussed the Gold Bar Lumber [644] Company's affairs quite fully and decided upon the price and terms as follows: \$340,000 for our undivided four-fifths interest in the property on the following terms,—\$50,000 down, and the balance in

(Testimony of R. C. Wood.)

\$25,000 payments every 60 days until paid, bearing interest at the rate of six per cent per annum. This offer to be made on condition that it be accepted within thirty days."

I desire next to introduce a portion of the minutes of the Fairbanks Banking Company of September 13, 1909 (reads):

"Telegram dated September 10, 1909 regarding sale Gold Bar Lumber Company property was read. Our wires to Gold Bar Lumber Company during August, 1909, regarding the same matter were read. "

Q. Now, Mr. Wood, it appears from some notes that were introduced in evidence here that upon the 12th day of April, 1910, three notes were executed by the Fairbanks Banking Company in favor of Dexter Horton Company for the sum of \$150,000.

A. Yes, sir.

Q. I will ask you to state whether or not that was for a loan that was obtained by the Fairbanks Banking Company from the Dexter Horton Company upon that date.

A. No, it was not. The notes were given for the purpose of covering an overdraft that the bank might have from that date until this bullion arrived there in Seattle.

Q. Was it customary to do that in the spring of the year?     A. Yes, sir.

Q. Why? Explain that.

A. They were dealing with national banks on the outside, and national banks do not like to carry an

(Testimony of R. C. Wood.)

overdraft. And that [645] is about the only way it can be handled. They must have some evidence from the bank itself of its indebtedness.

Q. Why is it necessary for the bank here to have an overdraft out there at that time of year?

A. That is the time that the bullion is in transit, and they are drawing heavily on their exchange. From the 1st day of May, or from the cleanup in the spring, until almost the 1st of July the bullion is in transit, and that is the time when the greatest amount of business is being transacted on the outside; that, and the fall of the year.

Q. You buy your bullion here?

A. We buy our bullion here and ship it.

Q. And then draw—(Interrupted.)

A. Draw against it.

Q. And they desire notes to cover?

A. The bank examiners complain of overdrafts, and these notes are taken to do away with the overdrafts.

Q. That was given to the Washington Trust Company instead of Dexter Horton Company.

A. That \$150,000 worth of notes?

A. Yes.

A. Yes. I believe they were.

Q. The same rule applied to them as to the national banks?

A. The business of the Washington-Alaska Bank and the Fairbanks Banking Company was afterwards taken over by the Dexter Horton Bank.

Mr. McGINN.—I desire to read from the minutes

(Testimony of R. C. Wood.)

of the Fairbanks Banking Company of date January 12, 1910, as follows (Reads):

“A letter from the Gold Bar Lumber Company under date of November 27, 1909, was read and ordered filed, together with the October statement and trial balance.” That October statement is already in evidence. [646]

Q. Mr. Wood, if you didn't have that credit there, what would you have to do?

A. Well, we would have to put up security here.

Q. So, if you didn't have the credit there, what would you have to do in the way of meeting your drafts?

A. I don't quite understand you. If we didn't have a credit?

Q. If you didn't have a credit out there at that time of the year, didn't have any money on deposit, what would you have to do?

A. You couldn't issue exchange against it.

Q. Would you have to ship money out to meet your exchange? A. Certainly.

Q. What would that cost?

A. It costs now \$5.00 a thousand.

Q. What did it cost then?

A. It cost a little more then, or about the same. I don't think the express rate has changed much in the last couple of years, for shipping it out either by express or registered mail, and I think the insurance was about 35 cents a hundred at that time.

Q. Then you would have to ship money back here again?

(Testimony of R. C. Wood.)

A. Yes. We would have to ship money here again.

Q. I will ask you if it was the custom of the banks here to carry past due paper?

A. Yes, it is and has been, was up until about two years ago.

Q. It is still the custom, isn't it?

A. Yes, to a greater or less extent it is. Where an operator comes in with a cleanup there is usually past due paper against the cleanup at the time.

Q. Because paper is past due, do you regard it as bad? [647]

A. Not at all, no, sir. The national bank examiners do not regard it as bad.

Q. They do not? A. No, sir.

Q. Do you carry any past due paper in the First National Bank?

A. When Wilcox was here we had \$14,000 worth of past due paper, and he never criticized it.

Q. How was it when Goodheart was here?

A. When he was here we had considerable more, and he did ask us to collect in some of the paper at that time.

Q. I will ask you to state whether you collected all of that past due paper that you had at that time?

(Plaintiff objects as immaterial; objection sustained.)

Mr. McGINN.—That is all for the present.

#### Cross-examination.

By Mr. RIDER.—Q. Mr. Wood, you stated on your direct examination that the power of attorney that you gave to Mr. Hill was executed in 1906 for



(Testimony of R. C. Wood.)

certain purposes, to be exercised by him in the organization of a company on the outside—in Seattle.

A. Well, I stated that I thought that was the purpose of the power of attorney at that time.

Q. Do you still think that?     A. Yes, sir.

Q. Do you know how your interest in the partnership was transferred to the corporation?

A. The manner that it was transferred?

Q. Yes.

A. It was transferred by an assignment.

Q. Do you know who executed it on your behalf?

A. No. I do not.

Q. There was some real estate, an interest in some real [648] estate, transferred to the corporation, was there not, by deed?

A. I believe there was.

Q. Do you know who executed that in your behalf?

A. No, sir, I do not.

Q. Is it not a fact that on March 16, 1908, Mr. Hill, acting under this same power of attorney to which you have referred, executed the instrument of your interest in the partnership to the corporation?

A. I don't know. I never looked it up.

Q. Did you ever execute any instruments for that purpose?     A. I don't think that I did.

Q. They were conveyed to the corporation, were they not?     A. They undoubtedly were.

Q. The only way they could be conveyed was by you, or Mr. Hill acting under that power of attorney, wasn't it?

A. No. They could be conveyed by an assign-

(Testimony of R. C. Wood.)

ment. It was property that belonged to the partnership.

Q. Who executed the assignment in your behalf?

A. I don't know. I signed the assignment myself.

Q. Are you sure about that?

A. I think so. I think I did.

Q. Here is an assignment dated March 16, 1909, purporting to convey certain property to the corporation. Is not that assignment executed in your behalf by Mr. Hill under the power of attorney, and conveying certain mortgages? (Hands instrument to witness.)

A. Yes. That was property that was held by the partnership to secure loans. [649]

Q. That is the property I am talking about?

A. Yes, sir.

Q. Your interest in the property that was held by the partnership was transferred to the corporation by Mr. Hill, acting under the power of attorney that he had from you executed in 1906?

A. Yes, sir, that was the bank business.

Q. The bank is the partnership?

A. The bank is the partnership, but it was carried as loans and discounts of the bank on the books of the bank at that time.

Q. Your interest in that property described in that assignment was conveyed to the corporation by Mr. Hill acting under the power of attorney, was it not?

A. My interest was the bank's interest. It was merely taken in my name to secure a loan at that time.

(Testimony of R. C. Wood.)

Q. All right. And the act of conveyance from you was had by Mr. Hill acting under that power of attorney.

A. Yes, sir. Mr. Hill and myself had each other's power of attorney. Sometimes a mortgage would be given in Hill's name, and sometimes a mortgage would be in my name. We gave each other power of attorney for the purpose of releasing these different mortgages that were the bank's affair. The bank was a partnership, and we could not take a real estate mortgage in the name of the Fairbanks Banking Company, a partnership. It had to be in the name of one or the other of the firm.

Q. And the power of attorney that you gave to Mr Hill was the one dated in 1906?

A. I think he has two.

Q. Has he ever recorded them both?

A. I don't know.

Q. Don't you know the only one he has ever recorded is the one that is introduced in evidence here?  
[650]

A. I don't know.

Q. Then on March 16th, 1908, Mr. Hill was acting under a power of attorney from you?

A. Mr. Hill had my power of attorney, yes, sir.

Q. Coming down to the time when you were elected manager of the three banks in the fall of 1909, I believe you stated that on December 31, 1909, all of the loans and discounts were prepared on a list and brought to you by Mr. Wesch and Mr. Jackson.

A. Yes, sir.

(Testimony of R. C. Wood.)

Q. Showing the loans and discounts of those two banks.

A. Yes, sir. I asked them to submit to me a list of the notes they considered bad in each of the institutions at that time, and we would charge them off.

Q. The notes they considered bad? A. Yes, sir.

Q. Was that all that was the lists, just the notes that they considered bad?

A. Yes, sir, on the lists they submitted to me.

Q. They didn't submit to you a list of all the loans and discounts—a complete list? [651]

A. I had a record, a complete list of the loans and discounts.

Q. You had them independently of them?

A. Yes, sir. I had this record here (indicating book).

Q. On December 31st when you made your charge off of bad notes, did you refer to the complete list that you had, or simply to the lists which Mr. Jackson and Mr. Wesch prepared for you?

A. I had the notes of the different banks at that time pretty well in mind, and I don't believe that I referred to any other—(interrupted).

Q. It was your judgment also that the notes enumerated on their lists were the only bad notes held by the two banks on that date?

A. It was my judgment on that date, yes, sir.

Q. That was based upon a careful examination of the paper held by the two banks.

A. Yes, and based upon investigations that I had Mr. McCormick make of the different mining plants

(Testimony of R. C. Wood.)

and machinery that the bank owned at that time.

Q. You attempted to inform yourself by other means than your own investigation as to the amount of bad paper in the banks.     A. Yes, sir.

Q. On that date, December 31, 1909.

A. Yes, sir.

Q. Did you charge off on that date for the Washington-Alaska Bank how many dollars? \$8,599.59, was it not?

A. I think there were some items charged off previous to that.

Q. That is the amount you stated.     A. \$8,599.59.

Q. That was the total amount of bad debts carried by the Washington-Alaska Bank on that date.

A. The amount we considered.

Q. The amount you considered bad.

A. Yes, sir. [652]

Q. You also on that date charged off the total amount of paper that you considered bad of the Fairbanks Banking Company.

A. That we considered bad, you say?

Q. Yes.     A. I think so, yes, sir.

Q. And that was done upon the same careful examination and investigation, was it?     A. Yes, sir.

Q. And determined to be \$23,514.39.

A. Yes, sir.

Q. Did there remain in any of the banks any paper that you considered bad at that time?

A. As I said, yes, sir, there was some paper there that might have been unsatisfactory at that time.

Q. What do you mean by that, doubtful?



(Testimony of R. C. Wood.)

A. It might have been doubtful, but we had security which we were waiting to realize upon.

Q. That was all that you considered bad.

A. I think that was, Mr. Rider.

Q. Now, how much did you say that the earned interest on the paper of the Washington-Alaska Bank amounted to on that date?

A. I say I wouldn't be sure, but I think it was over twenty or twenty-five thousand dollars.

Q. Considerable in excess of the bad paper.

A. Well, I think it would be about a stand-off.

Q. You think the bad paper and the interest would be about a stand-off?      A. I think so.

Mr. McGINN.—Q. You have only charged off about \$9,000 of bad paper, and you had no more bad paper after you charged that [653] off, and you had \$27,000 accumulated interest.

A. I misunderstood the question.

Mr. RIDER.—I am talking of the Washington-Alaska Bank, and I think my question was directed to that. Read that question.

(Question read as follows: "Q. Now, how much did you say that the earned interest on the paper of the Washington-Alaska Bank amounted to on that date"?)

Is that the way you want your answer; that the bad paper would be about a stand-off with the earned interest that didn't appear on the books as an asset?

A. The idea was this: We went over those lists. He submitted the list, and I asked Wesch if he thought that was all the bad paper of the Washing-

(Testimony of R. C. Wood.)

ton-Alaska Bank, and he said he thought it was, and I had had investigation made by McCormick, and we came to the conclusion that, while there was other paper there that might not be as satisfactory as we would like to see it, it was secured, and that we considered that we had wiped out all that was necessary at that time.

Q. Did you consider that there was bad paper there equivalent to the amount of earned interest which didn't appear on the books of the bank as an asset?

A. Did I think there was bad paper equivalent to the earned interest?

Q. To this amount of \$27,000.

A. I don't think I did. That is a long time, but I don't think there was at that time.

Q. You testified as a witness at Valdez in the trial of the criminal cases against E. T. Barnette and L. E. Wing, did you not? A. Yes, sir. [654]

Q. And in those criminal cases your testimony was taken down by a stenographer, was it not?

A. I don't know.

Q. Was there not a stenographer in the court reporting that proceeding? A. I think there was.

Q. You know Mr. Heimburger, the stenographer there at Valdez? A. I believe I do.

Q. Didn't he report the proceedings?

A. I think he did.

Q. In those cases, being numbered 334 and 37 of the United States versus E. T. Barnette and L. E. Wing, you were questioned respecting the quantity

(Testimony of R. C. Wood.)

of bad paper in the Washington-Alaska Bank and in the Fairbanks Banking Company on December 31, 1909, were you not?

A. I believe that I was examined regarding certain individual notes at that time.

Q. Were you not examined respecting the amount that was charged off, of the bad paper at that time, and why more was not charged off?

A. I think that was in regard to the Fairbanks Banking Company.

Q. Of the Washington-Alaska Bank?

A. I don't remember. If you have the testimony there—

Q. You were offered in that case by the Government as a witness?

A. I was subpoenaed by the Government.

Q. And you were cross-examined by Mr. Fink, the attorney for the defense? A. I believe I was.

Q. In your cross-examination were you not asked these questions, and did you not make these answers, referreing to [655] the charging off of bad paper? (Reads):

“Q. On the 31 day of December of the same year, being 1909, you went over the notes, did you not?

A. I went through them prior to that.

Q. But on the 31st day of December you segregated out what you actually considered bad paper and wrote that off?

A. The way that was done; Mr. Wesch was manager of the Washington-Alaska Bank, and Mr. Jackson of the Fairbanks Banking Company. We asked

(Testimony of R. C. Wood.)

them to make up a list of the loans that they considered bad at that time, and they did, and we charged them off.

Q. And you then included all the loans which in the opinion of you gentlemen it was proper in banking to charge off as bad paper.

A. I wouldn't say that.

Q. What proportion? You charged off \$26,000?

A. Yes.

Q. Why didn't you charge off all of it?

A. To tell you the truth, we didn't think the profits were there to charge it against."

Mr. McGINN.—You are referring to the Fairbanks Banking Company.

Mr. RIDER.—Very well, the Fairbanks Banking Company. You gave that testimony?

A. I did.

Q. And you didn't think the profits were there to charge the notes against.

A. That is the book profits at that time. That is exactly what I understood.

Q. You didn't charge off all the bad paper of the Fairbanks Banking Company on December 31, 1909?

A. I say there was some paper that might have been unsatisfactory in the assets. There were others that if we could realize on would more than offset that together with accrued interest.

Q. You didn't charge off all that you considered bad? A. That was our intention. [656]

Q. Didn't you state here that you did not, and that the reason you did not was because there were no

(Testimony of R. C. Wood.)

profits to charge it against?

Mr. McGINN.—What he said there is before the Court.

The COURT.—No, I don't consider that is before the Court.

Mr. RIDER.—Q. You said what I have read here?

A. Yes, sir, I did.

Q. And did you not further state, after you had answered that you didn't think the profits were there to charge it off against? (Reads):

“A. December 31, 1909, I think we charged off all the bank could stand at that time, the earnings of the bank itself, or most all of it.”

That was your testimony at Valdez.

A. I don't remember. If that is down there, that is my testimony.

Q. Will you say that you did or did not give that testimony?

A. At that time when I was testifying, I had no record of any kind before me at all. Here I have the records showing the securities on all the different paper at that time. It makes a difference when you are testifying from memory and when you have the records before you.

Q. You knew at that time whether you had charged off all the earnings that that bank could stand or not, didn't you? [657]

A. It was merely a matter of opinion at that time with me. You take a bank that fails, and five years afterwards you come back and ask questions of that kind and you might answer one way, but when you



(Testimony of R. C. Wood.)

are confronted with other evidence showing the securities on the records of the bank it places an entirely different light on it.

Q. Did you offer that as an explanation at Valdez?

A. No, I wasn't asked that question.

Q. You stated there as a positive fact that you charged off all the profits would stand.

A. I gave that as my opinion.

Q. Your testimony was given at Valdez when?

A. It was given in Valdez in December, 1912.

Q. Now, referring to the Washington-Alaska Bank, were you not asked these questions on cross-examination by Mr. Fink? You remember, do you not, that Mr. Fink examined you respecting the amount of accumulated profits on the notes?

A. I do.

Q. Which didn't show on the books?

A. I don't remember that, but he might have examined me about that.

Q. And did he not conduct this examination with you (Reads): "Q. Referring now to the Washington-Alaskan Bank. Then there was \$22,000 of earned interest which had not been paid in? A. And that much more bad debts. Q. I am talking about the book value. That was \$22,000 due if that was properly charged as book value? A. I don't think so, because you figure interest on bad debts. It was done in that case. I don't think it would have anything to do with the book value of the bank." Did you give that testimony?

A. I presume I did. As I say, I had no records

(Testimony of R. C. Wood.)

before me, and [658] here I have them all. And when you have the records before you, you can recollect and remember things that you can't do when you don't have them before you.

Q. Were you not asked these questions by Mr. Corssley, and gave these answers, referring to the same transaction. (Reads): "Q. You do know something about the bad notes carried by that bank?

A. I did. After the time of its purchase, I did.

Q. While you were advisory manager? A. Yes.

Q. And you know they exceeded any \$22,000 of interest that had accumulated as Mr. Fink states.

A. The bad and doubtful notes did." Did you give that testimony?

A. Well, I presume that I did. At that time, as I say, I had no securities there and no record of any securities on these notes, while to-day this book is the record of all those securities.

Q. These books were at Valdez at that time?

A. I never examined them.

Q. You never examined them?

A. I didn't. I don't know whether all of them were there.

Q. You didn't ask to examine them, did you?

A. No.

Q. You undertook to speak from your recollection? A. Yes, sir, from my recollection.

Q. Now, you stated that on April 12, 1910, when the Fairbanks Banking Company declared this dividend, it was carrying on its books, as one of its assets, the capital stock of the Washington-Alaska

(Testimony of R. C. Wood.)

Bank? A. Yes, sir. [659]

Q. In what amount? A. \$225,000.

Q. That is after the dividend had been declared?

A. Yes, sir.

Q. Prior to the time the Washington-Alaska Bank dividend was declared and paid or taken credit for by the Fairbanks Banking Company, the stock of the Washington-Alaska Bank was carried at \$250,000?

A. Yes, sir.

Q. Which was the purchase price of that stock?

A. That was the purchase price. Yes, sir.

Q. Then, after the dividend had been declared by the Washington-Alaska Bank, and when the Fairbanks Banking Company had declared its dividend, they reduced the Washington-Alaska Bank stock to \$225,000? A. Yes, sir.

Q. Now, you said something about the value of that stock. I don't think I got your answer.

A. On April 12th?

Q. Yes, if that was the time you were testifying about.

A. I said I considered that the directors thought that the value of the Washington-Alaska Bank stock was about \$225,000.

Q. More than one of the directors?

A. Yes, sir.

Q. What did you consider it worth?

A. Well, I considered it the same as the other directors.

Q. You considered it worth \$225,000?

A. Yes, sir.

(Testimony of R. C. Wood.)

Q. On April 12, 1910?     A. Yes, sir.

Q. What did you consider it worth on December 31, 1909?     [660]

A. Well, I thought it was worth \$250,000.

Q. What do you think it was worth in September, 1909, when they bought it?

A. Well, I think it was worth that amount.

Q. You think it was worth \$250,000?

A. Yes, sir, and I think other men will say the same thing.

Q. Your testimony respecting that matter was given by you in the Barnette cases, was it not?

A. I testified that I thought they paid \$75,000 too much for it.

Q. When you gave your testimony at Valdez you testified that you thought they paid \$75,000 more than it was worth, didn't you?

A. I don't remember about that.

Q. Let us see. Let me read the quesitons and answers. This is a question on direct examination by Mr. Crossley (Reads):

“Q. You knew what had been paid for the Washington-Alaska Bank?     A. I did.

Q. As a conservative banker, would you have paid \$250,000 for it?     A. I certainly would not.”

You gave that testimony, did you not?

A. I don't remember that.

Q. There were some objections and interruptions following that, and then continuing (Reads):

“Q. It was purchased in September, 1909. What was its value then? What was it worth then?

(Testimony of R. C. Wood.)

A. That is a pretty hard question to answer. If you take the actual book value of the bank, and give nothing for its good will, the value of that bank at that time—and charge off its bad debts—would have been I think, about to the best of my recollection, not over \$175,000. I doubt whether it would have brought that much if it had been liquidated at that time.

Q. In other words, they paid \$75,000 more than it was worth, in your opinion?

A. That has always been the way I felt about it.”  
[661]

A. You must understand that the Washington-Alaska Bank had quite a name and reputation in this country. The goodwill of that bank was worth considerable at that time.

Q. You knew all that when you were testifying at Valdez?

A. I probably didn't look at it in that way.

Q. Why didn't you?

A. I don't know why I didn't. I don't suppose I was asked that question or a question that would bring me to remember that.

Q. Do you mean that the question of the value of that bank is now being looked at by you from a different standpoint from what it was at that trial?

A. Well, I don't know.

(Defendants object to the question as being unfair. Overruled.)

Q. You had completed your answer when you said you didn't know?



(Testimony of R. C. Wood.)

A. It is a pretty hard proposition. Let me understand your question.

Q. Read the question. (Question read as follows: "Do you mean that the question of the value of that bank is now being looked at by you from a different standpoint from what it was at that trial?")

A. Well, I have talked over since that time with quite a number of men the condition of that bank at that time. It had over eighteen hundred thousand deposits and seventeen hundred thousand cash on hand. It showed a book value of \$206,000, in addition to any interest it might have earned on its accrued interest. And I have talked it over with men who knew something about that, and in their opinion they have told me that if that bank had fifty thousand dollars worth of bad debts that they would consider it worth \$250,000.

Q. You are a banker, are you not?      A. Yes, sir.  
[662]

Q. How long have you been in the banking business?

A. I have been in the banking business in Fairbanks for nine years or ten years.

Q. You knew the banking business before you talked with these men that you are referring to?

A. Yes, sir.

Q. You had been manager of the three banks, including the Washington-Alaska Bank?

A. After the purchase I was.

Q. For some six months?      A. Yes, sir.

Q. You were the manager of it?      A. Yes, sir.

(Testimony of R. C. Wood.)

Q. The affairs of that bank were submitted to you, as you testified, regularly by its officers?

A. I saw a statement of that bank every day.

Q. You met with the officers in consultation respecting that bank?      A. Yes, sir.

Q. That all occurred prior to the time you testified at Valdez, did it not?      A. Yes, sir.

Q. Again referring to the dividend declared by the Fairbanks Banking Company, was not one of the purposes in declaring that dividend to create a fund by which the past due notes of their stockholders could be reduced?

A. No, I don't think so. Now, in declaring that dividend it was estimated that there would be about one-half of the dividend—well, I forget how much—from ten to fifteen thousand dollars that would go into the bank, that is, the bank wouldn't pay out more than ten or twelve thousand dollars, or half the dividend. That was my [663] recollection. I have not examined that recently, but that is the best of my recollection.

Q. What would be done with the remaining half of it?

A. The remaining half would go into the bank itself.

Q. In what way?

A. In the way of interest and in the way of applying it on notes that the then stockholders had in the bank.

Q. One of the purposes was to reduce the amount of those notes by the application of the profits of the

(Testimony of R. C. Wood.)

bank through the medium of the dividend.

A. I don't think that was the purpose of the dividend at all.

Q. Didn't you give this testimony in those same cases? (Reads):

"Q. Do you know why that dividend was declared by the Fairbanks Banking Company?

A. Well, I presume they thought it was a profit dividend; that they had a right to declare it. And there was a great many notes owed to that bank by stockholders of the bank. A discussion arose that the declaring of the dividend would reduce the indebtedness of these stockholders to the bank. Of course, there was some stockholders that didn't owe the bank anything."

Q. You gave that testimony, did you not?

A. I think so.

Q. As a matter of fact, the dividend, although declared on the 12th of April, was not distributed I believe the books show, until the 15th.

A. I think some of it was paid on the 13th, was it not? Maybe not until the 15th.

Q. I think the testimony of Mr. Stewart was that the first was paid out on the 15th.

A. I know that some of that dividend remained in the bank for a year or more.

Q. Your attorney introduced in evidence here testimony concerning [664] the amount of earned profits of the bank on April 16, 1910. Do you not remember that?

(Testimony of R. C. Wood.)

A. I remember that he had Mr. Stewart's figure over the profits.

Q. On that date of April 16, 1910?

A. Yes, sir, showing about \$45,000.

Q. \$45,000 increase of profits?      A. Yes, sir.

Q. And that all arose from the application of dividend on past due notes, did it not?

A. I wouldn't say that all of it did, but the greater portion of it did.

Q. Now, coming to these notes that are shown on the list of April 12, 1910, which were past due on that date and were never paid, respecting which Mr. McGinn inquired of you?      A. Yes, sir.

Q. Of the notes that he called your attention to, I think you gave it as your opinion that it was your honest belief that on April 12, 1910, every one of them were good?      A. No. I didn't say that.

Q. Of those that he called your attention to?

A. I said on December 31, 1909, we charged off the notes we considered bad.

Q. Yes. And isn't this the amount that was due on the notes on April 12, 1910, that he was inquiring about?

A. The amounts? That was taken from this book here (Indicating.)

Q. Now, I believe—taken from what book?

A. From this record book.

Q. That is the securities you read from that book?

A. Yes.

Q. And the list was a list that Mr. McGinn had which he read to you and included notes of April 12,

(Testimony of R. C. Wood.)

1910. You knew that?

A. Yes, sir. That was the notes that I called off the [665] securities from that book.

Q. You understood those were the notes held by the bank on April 12, 1910? A. Yes, sir.

Q. You also understood that every one of those notes which Mr. McGinn listed to you was past due on April 12, 1910, did you not? A. Yes, sir.

Q. Some of them past due as much as two and three years, were they not?

A. I believe they were, yes, sir.

Q. You thought that there was ample security in the possession of the bank on April 12, 1910, to have collected every one of those notes which he called off to you?

A. I didn't say that they could be collected on April 12, 1910.

Q. When did you intend to be understood to say that they could be collected?

A. That would depend.

Q. On what? A. On conditions.

Q. What kind of conditions?

A. If a note was secured by a plant of mining machinery, I don't suppose you could go out on April 12, 1910, and sell it. But the value existed in that plant of mining machinery just the same. If you had a plant on Vault Creek, a 20 horse-power plant, and the bank had a mortgage on that plant, it might not have been to the best interests of the bank to try to sell it at that time and move it into town. It might have been that a little later someone would



(Testimony of R. C. Wood.)

come along and work the claim adjoining that claim, and the bank could sell it then to much better advantage. [666]

Q. You were working on pure chance?

A. No. It is not a chance. Mining machinery and the securities I read off this morning have got a value, and have a value to-day.

Q. When you leave it to what might have been, it is pure chance.

A. You have to take into consideration that if you have a 50 horse-power boiler to-day you might not be able to get \$100 for it, but that doesn't show that that 50 horse-power boiler isn't worth seven or eight hundred dollars.

Q. As security?      A. As security.

Q. For a note—      A. For a note.

Q. Although you can't get but \$100 on it?

A. To-day.

Q. And your note is past due?

A. And your note is past due.

Q. And you are called upon to pass upon the value of that past due note to-day?      A. Yes, sir.

Q. And you say it is worth \$700 because it has got that boiler that you might get \$700 out of, although you can only get \$100?

A. If you go over to the hardware store and get a price on a 50 horse-power boiler now, they would probably tell you it would cost you a thousand or twelve hundred dollars. You have got to place your value upon that, taking into consideration the depre-

(Testimony of R. C. Wood.)

ciation between the second-hand plant and the new boiler.

Q. When you took these securities to secure these notes, you expected that the securities would be sufficient to respond for the amount due on the note at any time, did you not?

A. Not at any time. No, I didn't say that.  
[667]

Q. I know you didn't say it, but that is the intention when you take securities.

A. Well, there are several things to take into consideration.

Q. Isn't that one of them that you take into consideration?

A. That you can liquidate the plant at any time, any moment?

Q. The security you take, you expect to be sufficient to liquidate and pay that note when it matures?

A. There might be other conditions.

Q. But at the time you take the security, isn't that the belief that is in your mind, that the security is sufficient?

A. Suppose there is a man on Goldstream who is working a lay. He has got a lay, and he has got pay. You think of loaning him \$1000; that his lay will pay that out. But, in order to secure yourself additionally, you take a mortgage on his plant, so that if it does happen that the man's lay doesn't turn out, you have that machinery to fall back upon.

Q. You are playing which, the lay or the machinery? A. You are playing both.

(Testimony of R. C. Wood.)

Q. For your security?

A. And you are playing an asset of that man's note, when he signs the note.

Q. The lay is nothing but a speculation?

A. A speculation, but all of this country here is speculative.

Q. You consider that sort of security which you acknowledge to be purely speculative, as a sufficient security for notes?

A. I didn't say that mining machinery was speculative. It always has some value.

Q. Your lay is speculative?      A. Yes.

Q. Very largely so?

A. In some instances it is, and sometimes it is not. A man [668] takes a lay on a piece of mining ground. He goes out and prospects it and finds pretty good pay. I don't think it is much more speculative than lots of other business deals that the banks have to go into.

Q. Let me call your attention to the note of Charles W. Kellogg respecting which you testified.

A. Yes, sir.

Q. Being number 625.      A. Yes, sir.

Q. That note is in the sum of \$717—the principal amount. It is dated September 19, 1907, and was due on or before May 1, 1908?      A. Yes, sir.

Q. What security did you have for that note on April 12, 1910?

A. Well, to the best of my recollection, and according to this record—(Opens book) there was an interest in 1 Above on Engineer Creek.

(Testimony of R. C. Wood.)

Q. See what the record shows about it.

A. It shows there was a mortgage on an undivided one-quarter interest in 1 Above, first tier, left limit, Engineer, and assessment work for 1910 done by laymen. The amount carried at that time was \$625.

Q. And it was sufficient to secure this note of April 12, 1910? A. To show you—(interrupted).

Q. Answer the question.

A. I considered it so.

Q. And the note was due on May 1, 1908?

A. May 1, 1908.

Q. Why didn't you collect it?

A. Because the laymen couldn't pay it at that time.

Q. You had the security? A. Yes, sir.

Q. Why didn't you collect it? [669]

A. You don't like to take the property of the men away from them when they are working on the ground.

Q. They were running a benevolent institution over there?

A. Mr. Parkin loaned \$800 on that interest, and took a second mortgage. The bank had a first mortgage and he took a second mortgage. We had \$1100 or \$1200 on that interest, and Mr. Parkin loaned them \$800 more, and took a second mortgage. That is the confidence he had in that property at that time, and I think to-day that property might be sold for that amount of money. There might be a million dollars in that property.

Q. And there might not be anything.

A. Yes, sir. But here was a piece of property be-

(Testimony of R. C. Wood.)

ing worked and operated, and the property adjoining it was turning out and had turned out to be rich.

Q. And he had not made enough out of it in two years to pay a note of \$700?

A. I don't think the ground was worked for two years. Mr. Parkin thinks enough of the ground to do \$50 or \$100 worth of assessment work every year.

Q. You think you would prefer to take your chances on being able to collect this sometime in the future rather than press the borrower?

A. In banking, the bank don't run its business for the benefit of its borrowers, but there are many things to take into consideration. A bank must help the community the best that it can. If they have a loan on a piece of property, and the man is doing everything he can to make good, it is not the interest of the bank to take that property away from him as long as they feel that they are [670] secured. The security has never been reduced on that piece of property.

Q. *There never* a nickel paid on this note by way of interest or principal.

A. How much was that for?

Q. \$717.

A. My record shows that it was for \$625.

Q. Well, here in the note (Hands to witness).

A. That is including the interest.

Q. The principal of the note is \$717.00, isn't it?

A. The principal of the note was \$625. That was the amount carried in this record book.

Q. How long had you been carrying this loan before



(Testimony of R. C. Wood.)

you took this note?

A. The note is on the date that the loan was made.

Q. Where does this \$100 difference come in? The note really was for \$625, you say?

A. The interest was added to the principal. And you will find that the note bears interest after maturity, and I think it is a time note, probably due in 1908, and the interest was not payable until after maturity.

Q. And it matured May 1, 1908?

A. I think so.

Q. And had been past due from that time up to April 12, 1910? A. Yes, sir.

Q. And you had not done anything to collect it?

A. No, sir.

Q. And it was perfectly good?

A. I think it is good to-day.

Q. Do you want to buy it?

A. I don't know. I might take a chance. [671]

Mr. McGINN.—I object to that.

The COURT.—He has answered.

A. If you will allow me to explain conditions that exist. The First National Bank had a piece of paper last year of its own amounting to about \$1100. It was three years old. And we took security on a piece of mining property for that \$1100.00, in addition to other creditors. We didn't fall in with the ideas of the other creditors that that was the time to dispose of that property. We waited until this spring, and we sold it for over \$5,000.

Mr. RIDER.—Yes, and you won. You waited on

(Testimony of R. C. Wood.)

\$70,000 worth of paper, and did you win on this?

Mr. McGINN.—There is no evidence that they waited on any \$70,000 worth of paper.

Mr. RIDER.—He was manager of the bank and the stuff was past due.

The COURT.—Answer the question.

A. You have to exercise judgment in those things.

Mr. RIDER.—Q. Your attention was called to a note of Tharp & Rusk this morning.      A. Yes, sir.

Q. I believe you stated that you considered that note perfectly good on April 12, 1910?

A. I believe I read the securities from the stock-book.

Q. The note you considered good, in connection with the securities?      A. I think I did.

Q. As a matter of fact, had not the bank charged that note off to profit and loss on December 31, 1909?

A. I don't think that was the same note.

Q. You did charge off a note to profit and loss of Tharp & Rusk on December 31, 1909, did you not?

A. I think we charged off one. [672]

Q. Look at your profit and loss account and see if you did?

A. When you charge a note off to profit and loss, you don't give it up.

Q. I understand that. What I want to know is, why you charged off to profit and loss on December 31, 1909, the note of a man when you hold two of his notes, and say that the other note was good on April 12, 1910?

A. The security might not have been sufficient to

(Testimony of R. C. Wood.)

cover all these notes. Mr. Rusk since that time has gone to Iditarod, and I understand has made good down there.

Q. Did that same security secure both of these notes? A. Whenever a man—(Interrupted).

Q. Answer the question.

A. Whenever a man is indebted to the bank, and they have security, I think they have a right to apply those securities on any debt that that man might owe the bank.

Q. And the securities you held, you felt were insufficient to satisfy both of these notes, so you charged one of them off?

A. I presume we did, or we wouldn't have charged it off.

Q. The note of Ensor & Griffith, number 675.

A. Yes, sir.

Q. I believe you say that you believed that that note, with the security, was perfectly good on April 12, 1910.

A. I think that note is good to-day. I think 6 Above, on Fairbanks Creek, is worth that to-day.

Q. Do you know when the bank took judgment on that note? A. I do not.

Q. Don't you know they took judgment in 1909 on that note? A. I don't know.

Q. And that you had judgment on that at that time? [673]

A. My record shows we have a deed of it.

Q. Why didn't you cancel this note?

A. I don't know. I don't know whether they sur-

(Testimony of R. C. Wood.)

rendered the property for the purpose of cancelling the debt or not. I presume the deed was given for the purpose of stopping the expense of foreclosing the mortgage.

Q. Ray Brumbaugh had a past due note in the bank at that date?     A. Yes, sir.

Q. And you say, with that past due paper in that bank, Ray Brumbaugh displayed checks of \$75,000 to you, and you didn't ask him to pay the paper.

A. No sir. I did not.

Q. Do you mean that you didn't say that?

A. I didn't say that.

Q. What did you say?

A. I said that in 1910 I saw \$75,000 worth of drafts drawn by the Miners & Merchants Bank of Iditarod on the Scandinavian-American Bank of Seattle in favor of Brumbaugh & Hamilton to the extent of \$75,000.

Q. What time in 1910?

A. After he came from the Iditarod in the winter of 1910 or '11.

Q. In May, 1910, these checks you say, had nothing to do with the value of the note.

Mr. McGINN.—He has not testified that he saw any checks in April or May, 1910.

A. Well, this much I will say: The firm of Brumbaugh & Hamilton were dealers in mining machinery, and they always carried an immense stock, and I think in the Iditarod they carried probably \$100,000 worth of stock at that time. These drafts that he showed me were for sales of machinery he had made

(Testimony of R. C. Wood.)

that year—revenues derived from his business in the Iditarod. [674]

Q. Was that note secured?

A. I think it was secured by Fairbanks Banking Company stock.

Q. Look at your book there.

A. That note to-day is in a different position than it was at that time.

Q. In a worse or better condition?

A. I think it is in a better condition.

Q. Hamilton was not on the note at that time?

A. No, sir.

Q. There was no one on the note but Ray Brumbaugh?

A. That is all. It does not say there was any security on that note in this book.

Q. This note is dated January 30, 1908, and due on or before 30 days.

A. Yes, sir; for the sum of \$7,762.50.

Q. Will you examine the indorsements on the note and tell me if there has been anything paid on that note by way of principal or interest prior to April, 1910? A. No, sir; there was not.

Q. There had not been a cent paid on it, had there?

A. No, sir. If you will look at the books of the Fairbanks Banking Company all that time you will find that the firm of Brumbaugh & Hamilton were indebted to the bank as high as fifty and sixty thousand dollars.

Q. Did they ever get to be in the credit of the bank?

A. I don't know. They were buying machinery



(Testimony of R. C. Wood.)

and shipping in goods. I presume they needed all of their cash taking care of their shipments.

Q. And you were carrying them along and not even collecting interest from them?

A. I don't know about that. [675]

Q. You didn't collect any interest on that note?

A. It doesn't appear that way.

Q. The interest payment that is made on this note is the application of this dividend you declared.

A. I think it is. But that note is not bad to-day. That note can be collected.

Q. Take the McMullen Brothers' note, number 2369. A. Yes, sir.

Q. That note was charged to profit and loss on December 31, 1909, was it not—this identical note?

A. I believe it was.

Q. Yet you say it was worth its face on April 12, 1910? A. I don't remember.

Q. Didn't you state that about the McMullen note?

A. I know that McMullen had property.

Q. Did you say his note was good on that date?

A. I believe I did. I believe it is good to-day.

Q. Why did you charge it to profit and loss?

A. Because it might not have looked so good at that time.

Q. Did it increase in value between December and April?

A. It might have been that this property on Dome Creek that was owned by him was producing at that time.

Q. It had increased between December and April?

(Testimony of R. C. Wood.)

A. Well, that is hard to say. I can't remember back five years.

Q. You knew from the fact that you charged that note to profit and loss that that was a hazardous loan?

A. Probably it might have been at that time.

Q. You knew it, or you would not have charged it to profit and loss?

A. Every note that is charged to profit and loss is not a dead loss to the bank. [676]

Q. If that note became good by April, 1910, and yet, having charged it once to profit and loss, why didn't you collect it?

A. I left the bank a week or two after that.

Q. You were there in April?

A. Yes, sir. But you can't collect anything in April. You can see to-day that the miners have not started to sluice up yet.

Q. Is that the only reason you can give me why it was not collected?

A. If I had it in my possession, I would have collected it.

Q. You had it in your possession up to April, 1910?

A. I had it from October, until the first of May, 1910, at a time when things are absolutely dead in this country—no cleanups going on at all.

Q. You authorized it to be charged off on December 31, 1909, did you not?

A. I presume I did. Yes, sir.

Q. Referring to the note of D. Fairburn, number 1688, I believe you said that that note was perfectly good in April, 1910.

(Testimony of R. C. Wood.)

A. I think that is good to-day.

Q. Your bank had started suit on that note prior to April, 1910?     A. Yes, sir.

Q. Do you know why that was not collected?

A. There were three men on that note.

Q. And you started suit?

A. And we collected three or four hundred dollars.

Q. Why didn't you collect all of it?

A. In April it is hard to collect those things.

Q. You had security for it?

A. We had security on mining machinery.     Yes, sir. [677]

Q. There is no indorsement here showing anything collected in April?

A. No.     I don't presume that there was.

Q. You started that suit in October, 1909, was it not?     A. I don't remember.

Q. And there is no further indorsement on this note until August, 1911?

A. I think that that suit was started for the purpose of attachment.

Q. To attach what?

A. Attach an account that one of the partners had in the Washington-Alaska Bank.

Q. For the purpose of collecting this note?

A. For the purpose of taking his balance that he had in the bank and applying it on the note.

Q. Did you get it?

A. They could have got it.     They had possession of it.

Q. Did you apply it on the note?

(Testimony of R. C. Wood.)

A. I don't know. I left there after that.

Q. You spoke about Allberg being good.

A. Yes, sir.

Q. In April, 1910?

A. Yes, sir, and he is good to-day.

Q. Allberg had been adjudged a bankrupt in November, 1908, had he not?

A. I don't remember about that.

Q. You didn't know that?

A. I don't remember that.

Q. Right here in this court?

A. It might have been. It has been a long time ago. But I think Allberg is certainly worth \$32.50 to-day.  
[678]

Q. You charged that note to profit and loss in December, 1910, did you not? A. I don't know.

Q. Can you determine from the books whether you did or not?

A. I had nothing to do with the bank in December, 1910.

Q. You were asked about the Tanana Electric Company note. A. Yes, sir.

Q. You considered that a good note in April, 1910?

A. Yes, sir. I did.

Q. Did I understand the substance of your testimony correctly? If I did, it was to the effect that Chilberg had signed a paper and left it with the bank, which obligated the Scandinavian-American Bank to protect those advances. Is that correct?

A. Yes, sir. I will tell you my remembrance of it. When I was in Valdez last winter, I at first thought

(Testimony of R. C. Wood.)

I didn't know much about that order, that is, I couldn't remember it distinctly. And when I was in Valdez last winter, I talked with Doctor Cassels about it, and he remembered it very well. And since Mr. Hill has come back this year, we have talked it over, and I am convinced now there was such an order.

Q. You speak now of the statements that Mr. Cassels and Mr. Hill gave you?     A. Yes, sir.

Q. The information they gave you.     A. Yes, sir.

Q. Not from your independent recollection of it?

A. When things are brought to your mind, one thing brings back another, and it was a long while ago, and it has been brought back to me.

Q. The matter of your understanding of that transaction was called to your attention by the taking of your deposition [679] in August, 1912, was it not?     A. Yes.

Q. In the case of Noyes, receiver, against the Scandinavian-American Bank?

A. Yes, sir. There was a lawyer here at that time that took the depositions.

Q. Your deposition, among others, was taken for use in the suit that was brought to try and recover from the Scandinavian-American Bank?

A. Yes. I think I was busy in my office one day, and this lawyer called me out and asked me if I would come over and give my deposition.

Q. Who was that lawyer?

A. Mr. Corrigan, I think.

Q. Wasn't Mr. Roth there?     A. I think so.



(Testimony of R. C. Wood.)

Q. Your deposition was taken in behalf of the plaintiff, and Mr. Roth represented the plaintiff?

A. Yes, sir.

Q. The purpose of taking your deposition was to discover what you knew about that transaction at that time?     A. I presume it was.

Q. Didn't you in your examination, in substance testify that there never was any understanding, so far as you knew, that bound the Scandinavian-American Bank to protect those advances?

A. I don't think I said that, because the mortgage itself that was on record here would show.

Q. That mortgage was not made to the Fairbanks Banking Company, was it? *it made* to the Scandinavian-American Bank and made by the Tanana Electric Company.

A. Yes, sir; to the Scandinavian-American Bank.  
[680]

Q. The Fairbanks Banking Company was not a party to that mortgage?     A. No.

Q. Was there any arrangement between the Fairbanks Banking Company and the Scandinavian-American Bank that the Scandinavian-American Bank would protect those advances?

A. As I say, since I have talked it over with Casels and Hill, and going over the affairs of this transaction, I have come to the conclusion that there was.

Q. Is that just a conclusion on that proposition as a matter of reason?

A. Well, I think that the letters and telegrams

(Testimony of R. C. Wood.)

that have been shown me, brought this back to my mind.

Q. Were not these questions asked you, and these answers made, when you were examined by Mr. Roth? (Reads):

“Q. Were these advances made, as represented by these notes, at the instigation of the Scandinavian-American Bank? A. Not that I know of.

Q. Were they made at the instigation of J. E. Chilberg?

A. Not that I know of. They were made at the instigation of the management and directors of the Tanana Electric Company in Fairbanks.”

Q. Was that your testimony?

A. I presume it was at that time. I came out of my office and went over there on five minutes notice, and took that deposition.

Q. Your deposition comprised an examination of the books by you, did it not, respecting that matter?

A. No, sir, I didn't look into a single book. I was there for not over half an hour, I think, at that time, and I never saw a book, and no book was offered to me.

Q. Didn't you state in this examination that the men who were working for the Tanana Electric Company were needing their [681] pay?

A. Yes, sir.

Q. That the wires were down, and you couldn't communicate with Seattle to determine whether or not you should make the advances.

A. Well, now, I think this condition existed—(interrupted).

(Testimony of R. C. Wood.)

Q. Answer if you didn't state that.

A. Read that over again.

Q. That the reason you didn't communicate with the Scandinavian-American Bank at Seattle to determine whether or not you should make these advances was because the wires were down.

A. I think the wires were down at that time.

Mr. McGINN.—If that is the deposition he should be allowed to read it.

The COURT.—The witness may refer to the deposition, if he desires.

A. I said to-day that Mr. Richmond had taken a note for the balance due the Scandinavian-American Bank and had gone outside for the purpose of procuring this credit from the Scandinavian-American Bank to apply on that note, and, as I remember, I think the wires were down at that time and that these men—there had been contracts let out there with the Tanana Electric Company, and the contracts had been fulfilled, and these men were after their money.

Q. Didn't you give this testimony? (Reads):

“Q. As a matter of fact, there was never a thought upon the part of yourself or any other officer of the Fairbanks Banking Company, so far as you know, that would authorize you to charge either one of these loans to the Scandinavian-American Bank, was there, in the ordinary course of business?”

A. There was never any reason that these amounts should be charged to the Scandinavian-American Bank until we were instructed to do so from its officers. If a charge had been made to the Scandina-

(Testimony of R. C. Wood.)

vian-American Bank of these amounts at that time, and disbursed by the Fairbanks Banking Company, the books of the Fairbanks Banking Company wouldn't have been correct." [682]

Didn't you make that answer?

A. I think I did.

Q. There was not any reason to suspect that you should make these charges against the Scandinavian-American Bank until you were advised to do it?

A. Exactly. And it was not done. But the Scandinavian-American Bank advised to the extent of \$10,000 against them.

Q. A further question (reads):

"Q. And the Scandinavian-American Bank did not authorize you in the usual course of business, or in any other manner, to advance these sums on their credit to the Tanana Electric Company, that you know of? A. Not that I know of.

Q. As a matter of fact, you know that they did not.

A. I know that they refused to."

A. Well, that was after the transaction had all been made that the Scandinavian-American Bank refused, and have refused to do so until to-day.

Q. Why did you say that they had never to your knowledge authorized these advances to be made, and you now say that there was a certain letter or memorandum of some sort respecting it?

Mr. McGINN.—Is this the Scandinavian-American Bank?

Mr. RIDER.—Yes, sir.

WITNESS.—Read that again. (Question read):

(Testimony of R. C. Wood.)

“Q. As a matter of fact, there was never a thought upon the part of yourself or any other officer of the Fairbanks Banking Company, so far as you know, that would authorize you to charge either one of these loans to the Scandinavian-American Bank, was there, in the ordinary course of business?

A. There was never any reason that these amounts should be charged to the Scandinavian-American Bank until we should be instructed to do so by that bank or its officers. If a charge had been made to the Scandinavian-American Bank of these amounts at that time, and disbursed by the Fairbanks Banking Company, the books of the Fairbanks Banking Company would not have been correct.

Q. And the Scandinavian-American Bank did not authorize you in the usual course of business, or in any other [683] manner, to advance these sums on their credit to the Tanana Electric Company, that you know of? A. Not that I know of.”

A. You will see all the telegrams that the bank got with reference to these different credits, and they were all signed by Mr. J. E. Chilberg.

Q. Two of the advances that were made by you prior to the amounts that are in controversy were paid by the Scandinavian-American Bank, were they not? A. Yes, sir.

Q. Each time paid by telegraphic advice from them. A. From Mr. Chilberg.

Q. Representing the Scandinavian-American Bank?

A. The telegrams I do not think are signed by the



(Testimony of R. C. Wood.)

Scandinavian-American Bank, or by Mr. Chilberg for the Scandinavian-American Bank, but signed by Chilberg.

Q. Asking you to charge it against them, and take the Tanana Electric Company's note.

A. I think you will find that they say: Take draft and take note Scandinavian-American Bank and send here. J. E. Chilberg.

Q. In each instance they asked you to take a note payable to the Scandinavian-American Bank.

A. I don't remember, but I presume they did. I was outside when this last note was taken.

Q. When this last note was taken, that was not taken payable to the Scandinavian-American Bank.

A. No, sir.

Q. It was taken payable to the Fairbanks Banking Company. [684]

A. Exactly, because advances had been made, prior to taking these notes, by the Fairbanks Banking Company at Cleary, and the bank had received a telegram then from Chilberg to make no further advances to the Tanana Electric Company.

Q. You testified respecting the amount of undivided profits of the Fairbanks Banking Company on April 13, 1910, and gave the amount as \$34,974.78.

A. I called that amount from this register.

Q. That is the gross amount that you called, was it not?

A. It was the amount that was in the undivided profits account at that time.

(Testimony of R. C. Wood.)

Q. Will you turn to that account where you had that?

A. Yes. The banks carry all their revenues and expenses under one account, and on December 31, each year, those different accounts are carried into an undivided profit account, and this amount has been carried into the undivided profit account, December 31, 1909. That was April 12th, 1910?

Q. April 13, 1910. Tell me if that amount there of April 13, 1910, of \$34,974.78 is not a gross amount.

A. Yes, sir, that is the undivided profit account, the balances and the amount of the dividend account.

Q. The amount of the dividend account?

A. Yes, sir.

Q. That is a gross amount, is it not? That is not a net undivided profit account, is it, on that date?

A. That is a net undivided profit account that was carried forward on December 31st.

Q. At that particular time, on April 13, 1910, is that a net undivided profit account of \$34,974.78?

A. That is the addition of the two items, undivided profit account and the dividend account. [685]

Q. That is a net amount? There is that much undivided profits in the bank on that date?

A. According to those books; yes, sir.

Q. Are there any other profits?

A. You had a statement of the revenues and expenses.

Q. I want to know the net undivided profits, the net earnings, of the bank on that date, as shown by those books.

(Testimony of R. C. Wood.)

Mr. McGINN.—It has been testified to by Mr. Stewart.

Mr. RIDER.—Q. Are there any expenses that should be charged against that amount?

A. Yes, sir.

Q. In what sum?

A. Not against this amount exactly. There are expenses and revenues.

Q. What is the item of expenses on that date?

A. The item of expense account is \$13,791.33.

Q. Can you compute from that statement you have there, the net earnings on that date?

A. The net earnings of the bank from January 1 to April 13th?

Q. No. As shown there on April 13th, what were the net earnings?

A. I don't remember whether the warehouse account is an earning account or not.

Q. Well, I don't know. A. \$12,892.04.

Q. What were the expenses on that date?

A. The expenses were \$13,791.33.

Q. What was the bad debt account on that date?

A. \$43.62.

Q. Add the bad debt and expense accounts.

A. \$13,851.71.

Q. What is the difference between that and the net earnings? [686] A. \$959.67.

Mr. RIDER.—That is all.

#### Redirect Examination.

By Mr. McGINN.—Q. Mr. Wood, I will ask you to state whether or not Mr. Hill had more than one

(Testimony of R. C. Wood.)

of your powers of attorney.

A. To the best of my recollection he had two.

Q. Do you know when the first power of attorney was executed?

A. I think it was when he first came into the partnership business in 1905.

Q. State whether or not that was a special or general power of attorney.

A. I think it was a general power of attorney.

Mr. McGINN.—That is all.

**[Testimony of James W. Hill, for Defendants.]**

JAMES W. HILL, a witness for defendants, after being duly sworn, testified as follows, to wit:

**Direct Examination.**

(By Mr. McGINN.)

Q. What is your name?      A. James W. Hill.

Q. Where do you reside?

A. Seattle, Washinton.

Q. What position do you occupy at present?

A. Assistant Superintendent Wells, Fargo & Company.

Q. When did you first come to Fairbanks, Alaska?

A. The spring of 1903, I think.

Q. And what was your business at that time?

A. At that time I was assistant traveling auditor of the Northern Commercial Company.

Q. How long did you continue with the Northern Commercial Company?    **[687]**

A. Until April, 1905.

Q. Then what did you do?

(Testimony of James W. Hill.)

A. Joined the copartnership of Fairbanks Banking Company.

Q. And that consisted of yourself, Mr. Wood and Captain Barnette.     A. Yes, sir.

Q. State whether or not you held a power of attorney of R. C. Wood's in the year 1905.

A. I don't remember absolutely. I think we exchanged powers of attorney at the time I joined the bank, but I have no distinct recollection.

Q. This partnership continued to do business, carrying on a banking business here, until about the 16th day of March, 1908, did it not?     A. Yes, sir.

Q. Were you present at the time the negotiations were carried on between the proposed incorporators of the Fairbanks Banking Company, a corporation, and the Fairbanks Banking Company, a partnership?     A. Yes, sir, at some of the negotiations.

Q. You remember the date that the Fairbanks Banking Company suspended business—the partnership?     A. On or about December 12, 1907.

Q. What was then done?

A. The bank called a meeting of its depositors.

Q. Where did they meet?

A. They met in the courthouse; this room here.

Q. Do you remember what date that was?

A. I think November 13, 1907.

Q. What did that meeting do?

A. They first of all appointed or elected by ballot a committee [688] of five to investigate the affairs of the bank, and determine whether it would be necessary to appoint a receiver for the bank.



(Testimony of James W. Hill.)

Q. That committee consisted of whom?

A. Doctor Cassels was chairman, and the other members were Claypool, Jonas, Ryan and Preston.

Q. What did that committee then do, Mr. Hill?

A. They came to the bank and spent about two days and practically all of one night.

Q. Doing what?

A. Going over the notes of the bank and investigating the books, in which they had the assistance of two accountants.

Q. Who were these accountants?

A. Mr. R. H. Miller of the firm of R. H. Miller & Co. of Chena, and Mr. Charles E. Taylor.

Q. Was Mr. Miller a competent accountant?

A. He was auditor of the North American Transportation & Trading Company for many years.

Q. Mr. Taylor was also a competent accountant?

A. Yes, sir.

Q. State whether or not this committee went through the affairs of the bank carefully.

A. They did, in my opinion.

Q. Do you remember at a meeting of this committee that the question came up as to the paper or loan as it was called, of the Tanana Electric Company?

A. Yes, sir. It was discussed.

Q. Was that discussed by them?      A. Yes, sir.

Q. Tell what was done, and what was shown them in connection [689] with that.

A. The note was shown to them, together with a letter or document which I think was signed by Mr. Chilberg as vice-president of the Scandinavian-American Bank.

(Testimony of James W. Hill.)

Q. What was that?

A. To the best of my recollection it set forth how the money should be advanced to make up the total amount that Mr. Chilberg had agreed that the Scandinavian-American Bank would advance on the mortgage which they took for \$100,000.

Q. To whom was this addressed?

A. I don't remember. But it set forth the manner in which the money should be disbursed.

Q. In whose possession was that?

A. In the possession of the bank at that time.

Q. When did you last see that?

A. I don't remember now.

Q. When was it figured that the Fairbanks Banking Company as a corporation would be able to take over the affairs of the partnership?

A. I remember that it was February 15th.

Q. What discussion was had relative to what should be done with the interest on the existing loans of the Fairbanks Banking Company, a partnership, as of date the 12th day of December, 1907, up until the bank should open up?

Mr. RIDER.—We object as irrelevant, incompetent and immaterial.

The COURT.—He may state the facts.

A. It was agreed that the copartnership should be entitled to the accrued interest on those loans up until the new bank would start business, or, in other words, until the new bank would be in a position to take over the securities.

Q. At what time was it figured that the new bank

(Testimony of James W. Hill.)

would be able to take it over?

A. About February 15th. [690]

Q. And do you remember the date that the Fairbanks Banking Company was organized?

A. March 15th or 16th.

Q. March 12th, was it not?

A. It might have been. I am depending on memory entirely now. [691]

Q. Mr. Hill, were you present at a meeting of the proposed stockholders held at the office of McGinn & Sullivan on or about the 6th day of January, 1908, when a subscription list that had been prepared, or a subscription paper that had been prepared, was signed by those persons present? A. Yes, sir.

Q. I will ask you to examine Plaintiff's Exhibit "B" and state whether or not that was the subscription that was signed at that time, if you can tell. (Hands same to witness.) A. Yes, sir.

Q. You signed that, did you? A. Yes, sir.

Q. I will ask you to look at the name "R. C. Wood," and state whether or not you signed his name to that instrument. A. I did not.

Q. You held Mr. Wood's power of attorney at that time, did you not, that is introduced in evidence here? A. Yes, sir.

Q. Why did you not sign his name to this subscription list, Mr. Hill?

A. I didn't feel justified in committing Mr. Wood, who was then on the outside.

Q. Was there any discussion had in regard to the matter at that time? A. Yes.

(Testimony of James W. Hill.)

Q. Can you tell us in substance what it was?

A. I stated to the meeting, as near as I can remember at present, that I didn't know how Mr. Wood would feel about the matter of the reorganization, and I didn't feel like [692] subscribing for him.

Q. You were present at the meeting of the stockholders held upon the 12th day of March, 1908?

A. I think so.

Q. And you were present at the time the board of directors were elected at that meeting, were you not?

A. Yes, sir.

Q. The stockholders at that meeting elected David Yarnell. Did you know David Yarnell?

A. I did.

Q. What was his business?      A. Mining.

Q. Where was he mining at that time?

A. On Dome Creek, I think.

Q. What kind of a man was Dave Yarnell?

Mr. RIDER.—Plaintiff objects as irrelevant, incompetent and immaterial.

Mr. McGINN.—I have a right to show the character of the directors; that he was a miner, and not a banker; and I have something else in view.

The COURT.—He may answer, subject to the objection.

A. He was a man of substantial means, a large operator, and a man of good integrity who stood well in the community.

Mr. McGINN.—How was his judgment regarded?

A. On what?

(Testimony of James W. Hill.)

Q. On mining properties.

A. It was considered good.

Q. Dan Ryan. What was Dan Ryan's business?

A. Dan Ryan owned a cigar store in town on First Avenue. He was also worth considerable means. [693]

Q. Both of these men had considerable deposits, or did both of these men have large deposits at that time in the bank?

A. I believe so. The books will show for that.

Q. C. J. Robinson?

A. He was mining at the time.

Q. Do you remember where he was mining at that time?

A. Either on Vault or Dome Creek. He mined on both creeks.

Q. What kind of a man was Robinson?

A. Considered conservative, of good character.

Q. M. H. McMullen. Do you know where he was operating at that time?

A. I think he was on Goldstream, Mr. McGinn.

Q. What was his business? A. Mining.

Q. Mr. C. E. Claypool.

A. He was an attorney at law.

Q. Robert Sheppard, A. Miner.

Q. Where was he engaged in mining?

A. On Fairbanks Creek.

Q. How were these men, Claypool, McMullen and Sheppard, regarded here in the community?

Mr. RIDER.—Q. Sheppard was never a director, was he?



(Testimony of James W. Hill.)

A. I don't think he ever qualified. My recollection is that Sheppard was elected, but never qualified.

Q. Cassels never qualified either?

Mr. McGINN.—His name doesn't appear here.

Q. Well, Claypool and McMullen; how were they regarded in the community? A. Good.

Q. Hans Stark. A. He was a mining man. [694]

Q. Where had he mined?

A. At that time I don't think he was mining, but he had made considerable money on Tenderfoot Creek.

Q. Had he prior to that time mined on Cleary?

A. Yes.

Q. John Flygar.

A. John Flygar was a mining man. He was then mining on lower Cleary.

Q. J. A. Jesson.

A. J. A. Jesson was mining at that time on Ester Creek, to the best of my recollection.

Q. J. P. Anderson.

A. J. P. Anderson I think mined on Cleary Creek.

Q. D. H. Jonas.

A. D. H. Jonas at that time owned a half interest in the Eagle Saloon, and also had numerous mining interests.

Q. E. T. Barnette.

A. E. T. Barnette was one of the copartnership that sold to the corporation, and had, of course, large mining interests.

(Testimony of James W. Hill.)

Q. Can you tell me what the stockholders had in view—one of the things they had in view when they elected this board?

Mr. RIDER.—We object to that as irrelevant, incompetent and immaterial.

The COURT.—The stockholders are not being held responsible.

Mr. McGINN.—I want to show that they selected men from the various creeks as directors so that in case of applications for loans these directors out there would know about the property, and they could be inquired of concerning the value of the property; that that was in view at that time.

The COURT.—That is getting too far away. Objection sustained.

Mr. McGINN.—Q. Now, from the minutes of the directors' meeting in [695] evidence here, it appears that the matter of taking over the affairs, that is, seeing that the proper conveyances of the property were made transferring it from the partnership to the corporation, was left to the executive committee. I will ask you to state what steps were taken and what was done by the executive committee towards carrying out that power that is conferred upon them.

A. I remember that they came into the bank I think on the day following, and went over the securities—the notes and securities.

Q. For what purpose?

A. I presume for the purpose of determining whether the notes were in the possession of the bank

(Testimony of James W. Hill.)

that they were selling to the corporation.

Q. Do you know what was then done towards making out the necessary transfers?

A. I think that matter was attended to by Mr. Dusenbury.

Q. Mr. Hill, you had the privilege of taking over stock or money for your portion of the assets that exceeded the liabilities of the partnership, in the corporation.

Mr. RIDER.—We object as irrelevant, incompetent and immaterial.

The COURT.—There is no question about that.

Mr. McGINN.—No question about that. But I want to show his absolute good faith in the institution at that time.

The COURT.—I think it appears that he took stock.

Mr. McGINN.—Q. Are you acquainted with Mr. Dusenbury? A. Yes, sir.

Q. How long had Mr. Dusenbury been connected with the partnership?

A. From the early summer of 1905. [696]

Q. And stayed with the Fairbanks Banking Company until some time in October, 1909, did he not?

A. Yes, sir.

Q. I will ask you what Mr. Dusenbury did for the purpose of taking stock in the corporation.

Mr. RIDER.—Objected to as irrelevant and immaterial.

The COURT.—It already appears that he subscribed for stock, does it not?

(Testimony of James W. Hill.)

Mr. McGINN.—Yes, but I want to show that he sent outside and got the money from a savings account, to show what faith he had in the bank at that time.

The COURT.—Objection sustained.

Mr. McGINN.—We offer to prove that if permitted to answer, he would make that answer.

The COURT.—Yes.

Mr. McGINN.—Q. You became a member of the board of directors when?

A. I think September, 1908. [697]

Q. Now, I wish you would go on and state in your own way what you know in reference to this Tanana Electric Company loan.

A. In the summer of 1906 Mr. J. E. Chilberg, vice-president of the Scandinavian-American Bank, came to Fairbanks. One of the objects of his visit was to finance, or help finance, the Tanana Electric Company, which was then operating on Cleary Creek, at the mouth of Cleary Creek. They were then operating with a small plant, and of course their power was limited. Mr. Chilberg had some plans for the installation of water power by turbines, and he wanted to get some local people interested in the project along with the people who had subscribed for stock in Seattle, and he circulated a subscription list among some of the people whom he was acquainted with here, with the result that some \$40,000 was subscribed—\$70,000 worth of stock was subscribed, to be paid for at a certain given date. One of the conditions of the subscription was that the

(Testimony of James W. Hill.)

Scandinavian-American Bank would advance the sum of \$100,000 for the installation of this power plant—water power plant. The Tanana Electric Company were to give a first Mortgage to the Scandinavian-American Bank for \$100,000, which was subsequently done and the mortgage sent out to Seattle. At the time that these subscriptions fell due, the local subscribers paid in something like \$40,000 in cash, which was remitted to the Scandinavian-American Bank or to Mr. Chilberg at Seattle. [698]

Q. Who was that paid to?

A. I think it was paid into the bank.

Q. And by the bank—

A. And by the bank remitted to Seattle. The balance of that subscription was the subscription of Mr. Volney Richmond, for which I understood he gave a note to Mr. Chilberg. Anyway, it was a personal transaction between them, as to how he should pay for his stock. The other \$5,000 I think was a subscription of Mr. Chilberg himself, in addition to what he had originally subscribed. After the mortgage had been prepared and sent out, the Scandinavian-American Bank or Mr. Chilberg transferred a credit to the Fairbanks Banking Company of \$18,500.

Q. Why did they transfer that? What was the arrangement between Chilberg and the bank in regard to the bank advancing any money?

A. I testified the other day that there was some document in existence at that time in the nature of an authority for the bank to advance that money and be reimbursed by the Scandinavian-American Bank



(Testimony of James W. Hill.)

until the full amount of the mortgage had been disbursed.

Q. What was the arrangement in regard to when the bank was to be paid for these advancements?

A. From time to time.

Q. State what the arrangement was.

A. I don't remember the exact wording of this document.

Q. I don't care about the document, but the understanding between you outside of the document.

A. The understanding, you mean, between Chilberg and the Fairbanks Banking Company?

Q. Yes. [699]

MR. RIDER.—That is objected to unless it is shown that Mr. Chilberg had authority to speak for the Scandinavian-American Bank at that time.

A. This document I have in my mind at the present time was signed by Mr. Chilberg as vice-president of the Scandinavian-American Bank. (Objection overruled.) The officers of the bank never felt for one moment that they were advancing the money to the Tanana Electric Company on the credit of the Tanana Electric Company, but were making advances to the Tanana Electric Company for which they would be reimbursed by the Scandinavian-American Bank from time to time.

Q. What was the understanding as to how these advances should be made, and how you were to be credited?

A. We were to telegraph the Scandinavian-American Bank from time to time as money was required,

(Testimony of James W. Hill.)

and they would in turn credit bank account.

Q. When money was required by whom?

A. When money would be required by the Tanana Electric Company to pay their pay checks.

Q. Did you advance them the money here, and then telegraph to them that you had done it?

A. Yes, sir.

Q. State what the arrangements were and what you did in that respect.

A. I don't know that we had advanced the full amount of \$18,500 that we telegraphed for the first time, but we had advanced a good portion of it. The books will show exactly what had been advanced. You know I am testifying from memory as to matters that happened seven years ago, and I have not referred to the books before going on the stand. [700] My recollection is that we had advanced the major portion of \$18,500.00 before we telegraphed to the bank for that amount of credit to our account, which they credited to our account, but instructed us to send a note for that amount. That amount was exhausted immediately, and we commenced to advance more money until we had advanced some \$25,000, at which time we again telegraphed, and received a credit. Then, subsequently, we kept on paying pay checks right along, and felt that we were absolutely secure. And in the fall, along towards the end of September, Mr. Richmond went outside with the understanding with the bank—I heard him talking with Mr. Wood—that as soon as he got to Seattle he would arrange with Mr. Chilberg to apply the whole

(Testimony of James W. Hill.)

balance of the \$100,000 to our credit and have it telegraphed into Fairbanks to reimburse the bank for what they were advancing in the meantime. He knew we were paying those checks right along—and that this balance of that money so transferred would reimburse the bank for what they had advanced up to that time and take care of any future demands in connection with the work.

Q. What position did Mr. Richmond occupy?

A. He was manager of the Tanana Electric Company.

Q. Did you receive any word from Mr. Richmond?

A. I didn't receive any word direct, but I saw a telegram from Mr. Richmond.

Q. To whom?

A. To Mr. Wilson, who was their secretary at that time. He brought it over to the bank and showed it to me.

Q. Do you know where that telegram is?

A. No. It was never in my possession. [701]

Q. Have you tried to locate it?

A. I asked Richmond for that, but he couldn't find it. I think Mr. Wilson kept it.

Q. What were the contents of that telegram?

A. It was to the effect that Chilberg was absent in the east and was expected to return in ten days or two weeks, at which time the matter would be arranged; and that Richmond was leaving that night for San Francisco.

Q. Arrangements in reference to this advance of money?

(Testimony of James W. Hill.)

A. Exactly. So we kept on advancing money until the amount reached approximately \$30,000, and I figured that by that time we should have heard from Mr. Chilberg; that the time had elapsed so that he should be back in Seattle, and I knew that there was a financial flurry threatening on the outside, and I telegraphed Chilberg that the advances to the Tanana Electric Company up to that time were so much, and asked that he credit the account of the bank, and telegraph us; furthermore, in my message I think I said that unless that credit were placed immediately we would have to discontinue making, or paying, any more checks of the Tanana Electric Company. He came back with a wire, which I believe is in evidence, that we should make no further advances to the Tanana Electric Company, which telegram was followed up with a letter explaining financial conditions on the outside.

Q. Then what did the bank do in the way of obtaining any paper?

A. At that time, we had never taken any notes from the Tanana Electric Company until telegraphed to do so by the Scandinavian-American Bank; we simply carried the account as an overdraft, and when that credit was transferred by [702] telegraph, we charged the Scandinavian-American Bank and credited the checking account of the Tanana Electric Company. But at that time when Chilberg wired back to make no further advances, or on or about that time, this Tanana Electric Company showed an overdraft of about \$30,000, and as I remember, I went



(Testimony of James W. Hill.)

upstairs and consulted you in regard to the matter, and you advised me that I take a note.

Q. Take the note of whom?

A. From the officers of the Tanana Electric Company here, Mr. Claypool and Mr. Wilson, which I did, because we were not in the habit of carrying any large overdrafts.

Q. Those are the notes that you subsequently carried in the bank.

A. Those are the notes that we subsequently carried in the bank, and we expected the Scandinavian-American Bank to pay it.

Q. I will ask you if in March, 1908, you regarded that as a good claim against the Scandinavian-American Bank?     A. I did.

Q. How would you regard that claim in April, 1910?

A. I would say that at that time it was still good.

Q. Do you know whether or not the Scandinavian-American Bank had advanced against this?

A. Yes. They took care of some of our drafts at that time which were being presented in Seattle to the amount I think of some \$10,000, which account was carried on the books I think up until the time I left; in *order* words, we owed the Scandinavian-American Bank on our books, as against that credit, some \$10,000.

Q. Did the Scandinavian-American Bank ever make any demand [703] for that \$10,000?

A. Not to my knowledge. I might say further that in connection with this Tanana Electric Com-



(Testimony of James W. Hill.)

pany, in the fall of—early spring of 1909, Mr. Claypool went outside to Seattle and took with him all the data that we could give him at that time, with the idea that he was going to force the Scandinavian-American Bank to come through with the balance of that mortgage.

Q. Do you know whether or not he had this order or guaranty?

A. I think Mr. Claypool had it at that time. I am reasonably sure I saw it in his office one time.

Q. Is that the last you have ever seen of it?

A. Yes.

Q. You testified Mr. Claypool was an attorney.

A. Yes, sir.

Q. Did you ever hear him express an opinion as to whether that guaranty was binding upon the Scandinavian-American Bank?

Mr. RIDER,—We object as immaterial.

Mr. McGINN.—This is a question of good faith.

Mr. RIDER.—What are you relying on; the guaranty or something that Claypool said?

Mr. McGINN.—I am asking whether Claypool expressed himself on it. The directors, if they make a mistake, are not responsible if they acted in good faith; and the fact that they acted under instructions of attorneys, relieves them.

The COURT.—He may answer the question.

A. Not only Mr. Claypool, but the trustees. There were several other trustees of the Tanana Electric Company in town here, and they thought at all times that we were absolutely [704] secure,

(Testimony of James W. Hill.)

and protected on those advances.

Mr. McGINN.—Q. You were a stockholder at the time the bank closed,     A. I was.

Q. How did you happen to leave the bank?

A. Principally on account of my health. I had to go outside in the fall of 1909 to undergo an operation.

Q. When did you leave here?

A. On September 19th I think it was, 1909.

Q. I will ask you to state what in your opinion was the condition of the Fairbanks Banking Company at that time?

A. I considered it in good condition. 1909 had been the biggest year in the history of Fairbanks so far as the output of gold was concerned, and general conditions were good.

Q. About the Dan Jonas drafts. Explain about that.

A. Those are the drafts for \$2,000 and \$3,000 respectively?

Q. Yes.

A. My recollection of these transactions is; that in the summer of 1909 Jonas was mining,—operating as a miner, and was also interested in some copper properties with Doctor Pohl over in the Copper River country, and he required money from time to time in connection with payments on these properties and other properties, and we on several occasions cashed drafts of Mr. Jonas drawn on his brother in New York. He showed us letters and correspondence from his brothers, or his brother Ralph, indi-

(Testimony of James W. Hill.)

cating that he, [705] or his two brothers, would finance Jonas and these properties to a certain amount, some sixteen or twenty thousand dollars is my recollection at the present time. We, as I say, advanced from time to time on drafts of from \$1000 to \$1500, and took his draft or drafts and sent them to New York where they were paid. Along in the early fall, just before I went outside in 1909, Jonas came to the bank and stated he would like to draw \$5,000 on his brother at New York in two drafts dated on two different dates, I think one month apart,—for the sake of argument I think one was dated on the 1st of November and the other on the 1st of December. He said that he was still well within the amount that his brother had agreed to finance him for. Of course, the officers of the bank had no authority to do anything of that kind without the consent of the board of directors, or of the executive committee at any rate, and the matter was brought up before the executive committee, or the board of directors—the minutes should show—and the circumstances explained, and, in view of the fact that we had previously during the summer advanced certain moneys against this credit that he was supposed to have, we were authorized as officers to do so again.

Q. And the advances were made?

A. And the advances were made, and the drafts taken.

Q. Did you ever see a telegram that was sent—  
(Interrupted.)

(Testimony of James W. Hill.)

A. I left the bank. I have simply been told that the drafts have never been paid. [706]

Q. Do you remember whether or not, prior to the adoption of the by-laws, the question of the corporation buying the stock of any of its members was discussed? A. At which meeting?

Q. Prior to the stockholders meeting of March 12, 1908 when the by-laws were adopted.

A. Yes. The matter had been discussed.

Q. What was the sense of the stockholders upon that matter? [707]

A. That it would be advisable to have the bank have the first option to buy back its own stock.

Q. For what reason?

A. So that they could control the stock, or so that it couldn't fall into other hands and be used for purposes detrimental to the bank's interests; in other words, we didn't want any of the other banks to get hold of any of that stock.

Q. Do you know whether any advice was taken at that time as to whether the corporation had the power to buy in stock?

A. The whole transaction was handled under the advice of the firm of McGinn & Sullivan, who were then attorneys for the bank.

Mr. McGINN.—I desire to read into the record at this time these portions of the by-laws (Reads):

“All issued and outstanding stock of the company that may be donated to or purchased by the company or which shall revert to the company by reason of failure to pay for the same, shall be Treasury stock,

(Testimony of James W. Hill.)

and shall be held subject to disposal by the action of the board of directors. Said stock shall neither vote nor participate in dividends while held by the company.

The board of directors shall be given the first option to purchase for the corporation the stock of any stockholder, and shall be entitled to purchase the same, provided said board of directors shall offer to pay to said stockholder the same amount, as he might obtain from other persons."

Q. Do you know whether or not the directors of the Fairbanks Banking Company received any compensation for serving? A. No, sir.

Q. What was the intention of the board of directors in regard to the stock that was surrendered and turned into the treasury as to retiring it for good, or reissuing it?

A. The intention was at all times to reissue it to other purchasers. [708]

#### Cross-examination.

Mr. RIDER.—Q. Do you know anything about a telegram being sent to Mr. Wood respecting this discussion that was had with the board of directors and Captain Barnette on March 12, 1909, in regard to obtaining estimates of the value of Gold Bar?

A. I think we wired—(Interrupted.)

Q. In 1908, I mean.

A. Yes. I think a wire was sent to him.

Q. Examine this telegram of March 18th, and which has been offered in evidence and marked Plaintiff's Exhibit "S," and tell me if that is the tele-



(Testimony of James W. Hill.)

gram. The translation is on the back of it.

A. Yes, sir. I think such a telegram was sent.

Q. This is the telegram that was sent as a result of the discussion between the directors and Captain Barnette respecting whether or not the directors would take the Gold Bar stock?

A. I think we also telegraphed Dexter Horton & Company.

Q. And you telegraphed your partner Mr. Wood at the same time.

A. Yes, sir. He was in Seattle at that time.

Q. And in this telegram you state (Reads):

“Directors of the bank desire the opinion of Dexter Horton estimate value Gold Bar. Desire to know from independent source to make denial of rumors here that accepted valuation is too high.”

That is what you asked Dexter Horton’s opinion for. A. The directors asked the opinion.

Q. To make denial of rumors that you were buying it for too much?

A. To satisfy them absolutely that the property was worth the value.

Q. There were some rumors here that you were paying too [709] much for Gold Bar, were there not?

A. It was so expressed at the meeting of the board of directors I didn’t hear them outside of there.

Q. At that same meeting you voted to take it—March 12th. A. I didn’t vote.

Q. The board of directors did, and you were present? A. I was present, but I was not a director.

(Testimony of James W. Hill.)

Q. You were a member of the executive committee at that time?

A. I think I was elected that night to the executive committee.

Q. You were vice-president then?

A. Elected that night I think, Mr. Rider.

Q. Elected after this meeting was held?

A. I think at that same meeting.

Q. You were there and knew that this discussion was on?     A. Oh, yes.

Q. And you know that the directors had decided to take Gold Bar.     A. Yes, sir.

Q. And then, after they had decided to take it, they wired Mr. Wood, stating that they wanted the estimate of Dexter Horton because there were rumors here that they had paid too much for it.

A. Yes, sir.

Q. It was to quiet that rumor that you wanted to hear from Dexter Horton.

A. Not to quiet any rumor I knew of. It was merely expressed at that meeting that there was some rumor.

Q. The purpose of sending that telegram was to allay that rumor?     A. The telegram to Mr. Wood?

Q. Yes. [710]

A. No. The telegram to Dexter Horton was the wire.

Q. The telegram was to Wood to inform him that the directors wanted the opinion of Dexter Horton so that they could allay that rumor?

A. Unquestionably the telegram would so indicate.

(Testimony of James W. Hill.)

Q. During the time of the organization of the bank, the corporation, I believe you stated that Mr. Wood was outside.     A. Yes, sir.

Q. And you and Mr. Barnette were here looking after the partnership matters.

A. Most of the time, I was in Valdez part of the time.

Q. And you went there to meet Mr. Wood?

A. Yes.

Q. Why didn't you go on down to Seattle?

(Defendants object as immaterial. Sustained.)

Q. How long were you at Valdez?

A. About three weeks.

Q. Then you immediately returned to Fairbanks.

A. I did.

Q. And excepting that interim, you were here all the time during the negotiations in the matter of the reorganization of the bank?     A. Yes, sir.

Q. You kept Mr. Wood constantly advised by telegram and letter of what was going on.

A. I presume so.

Q. Don't you remember you did?

A. I think so.

Q. You endeavored to do so?

A. I was here at the time the first meeting was held on or about January 5th or 6th, and my recollection is that I started for Valdez very shortly after that, and was absent [711] from here until almost the end of February.

Q. Prior to the time you went to Valdez, and while Mr. Wood was in Seattle, you endeavored to keep

(Testimony of James W. Hill.)

him advised of the situation.

A. I think I sent him telegrams.

Q. Frequently?

A. I don't know how frequently.

Q. You also wrote him lengthy letters about what was transpiring here?     A. Yes, sir.

Q. Do you remember the receipt from Mr. Wood of a telegram dated Seattle, January 6th, and which has been identified and offered in evidence as Plaintiff's Exhibit "X," addressed to the Fairbanks Banking Company, the translation is on a little yellow sheet on the other side?

A. Yes, sir. In fact, I wrote that translation myself.

Q. This telegram is in reply to one from you of the 27th of December, and states; "If you can organize, can we obtain an interest in." That is a request, as you understood it, from Mr. Wood to obtain an interest in the bank that was being organized.

A. Yes, sir.

Q. Do you remember the date that telegram was received, whether it was received the day of its date, January 6th?     A. I don't remember that.

Q. It bears date of January 6th.

A. It probably was received that day, or the following day, unless the lines happened to be down.

Q. You wrote Mr. Wood a letter dated January 8th, and which is in evidence as Plaintiff's Exhibit "F-16." (Hands same to witness.) State whether or not you can identify that [712] as the letter, or whether you remember the letter.

(Testimony of James W. Hill.)

A. I think I identified that letter the other day, at least I identified my signature.

Q. You remember the letter?

A. I remember that letter. Yes, sir.

Q. That letter bears date January 8, 1908.

A. Yes, sir.

Q. That was after the meeting of the proposed stockholders and subscribers, to which your attention was called by Mr. McGinn, and at which meeting the list of subscribers, on which Wood's name appears, was presented? A. Yes, sir.

Q. And you wrote this letter for the purpose of advising Mr. Wood, and did advise Mr. Wood, that there would be a quantity of the stock reserved for yourself, Mr. Wood and Mr. Barnette?

A. Yes, sir. It went further. Mr. Wood and I had the option of taking cash in lieu of stock.

Q. You think that is in this letter?

A. May I look at it a moment?

Q. Certainly (Hands same to witness.)

A. No, I don't see it there. But I think I wired him at that time to that effect, though.

Q. Now, the stock subscription to which your attention was called by Mr. McGinn, and which has Mr. Wood's name to it, you say you did not sign Mr. Wood's name to that. Do you know who did?

A. Yes, sir.

Q. Who? A. Captain Barnette.

Q. And this telegram of Mr. Wood, to which your attention was [713] called, and which is dated January 6th, is addressed to the Fairbanks Banking



(Testimony of James W. Hill.)

Company, of which Captain Barnette was a member as well as yourself?     A. Yes, sir.

Q. Do you remember whether that name of Mr. Wood was signed there prior to the time that the proposed stockholders convened, or during the time they were in session?     A. It was at the meeting.

Q. Mr. Barnette signed Mr. Wood's name.

A. I remember that very distinctly.

Q. Then you presented the list to those who were present?

A. I didn't personally. At that meeting, you mean, on January 5th?

Q. Yes.     A. No.

Q. Who did present that list?

A. I don't remember now. That is the meeting on January 5th, the original meeting?

Q. Yes. Did you present it, or did someone else?

A. I think not. I signed it, though, then.

Q. You are right. The minutes show nothing at that meeting of that sort. But at the meeting of the stockholders, when you actually became stockholders, which was held on the 12th of March, 1908, the date the by-laws were adopted, you were present at that meeting?     A. Yes, sir.

Q. And at that meeting you did present the subscription showing the subscribers to the capital stock, did you not?

A. Mr. McGinn asked me that, but I don't really remember presenting the list.

Q. You don't remember whether you presented it or not?     [714]

(Testimony of James W. Hill.)

A. No. But if the minutes say I did, I don't deny it. But I have no present recollection of it one way or the other.

Q. Do you remember whether that was the same subscription list as the one that was presented to the proposed stockholders on January 6th?

A. I don't remember that.

Q. Now, Mr. Hill, you state that the bank opened on December 23, 1907.

A. To the best of my recollection that was the date.

Q. And at that time you went on a scrip basis.

A. Yes, sir.

Q. The partnership continued on a scrip basis to the time that the corporation was formed, did it not?

A. I couldn't be sure, but I think so. I wouldn't be absolutely sure.

Q. And at the time that the corporation was formed, the securities of the partnership were in the hands of trustees, were they not? A. That is so.

Q. You remember that?

A. Yes, for the redemption of the scrip.

Q. And under *and* agreement between the partners and the depositors committee. A. Yes, sir.

Q. And when the corporation came into existence and started in to do business on March 16, 1908, all of its available securities were in the hands of the trustees to protect scrip that had been issued by the depositors' committee during the time that you were a partnership, were they not?

A. I think so. [715]

(Testimony of James W. Hill.)

Q. Do you remember how long those securities remained in the hands of trustees?

A. After the incorporation?

Q. Yes.

A. I couldn't tell you. I presume until all the scrip was retired.

Q. There was some of it that was not retired for nearly a year and a half. But do you remember when the bulk of the scrip was retired?

A. I think along in April.

Q. Do you think it was as early as April?

A. I think it was.

Q. Anyway, down until that time these securities did remain in the hands of the depositors committee?

A. Yes, sir.

Q. And were not in the possession of the bank?

A. No, sir.

Q. That is, of the corporation?

A. I think that is right.

Q. What securities do you understand were turned over to the depositors committee, or these trustees?

(Defendants object as immaterial. Argument.)

Q. Going, now, to the Tanana Electric Company's note concerning which you have testified, the Fairbanks Banking Company, a partnership, was a stockholder in the Tanana Electric Company from the time of its organization down to the time that the depositors committee was appointed, was it not?

A. Not from the time of its organization.

Q. Well, they were at the time the depositors committee was appointed? A. Yes, sir. [716]

(Testimony of James W. Hill.)

Q. The Fairbanks Banking Company was an original subscriber to the stock, was it not?

A. Not original subscribers. They subscribed to some stock when Mr. Chilberg was in Fairbanks in the summer of 1906.

Q. And the partnership continued to own that stock down to the time that the corporation was organized? A. Yes, sir.

Q. That is the partnership of Barnette, Hill and Wood, known as the Fairbanks Banking Company?

A. Yes, sir.

Q. You were an officer of the Tanana Electric Company yourself, were you not?

A. I think at one time I was a trustee.

Q. A member of the board of directors?

A. A member of the board of directors.

Q. Do you know for what period of time you remained a member of the board of directors of the Tanana Electric Company? A. I don't remember.

Q. Were you a member of the board of directors in the fall and winter of 1907 and '8?

A. No. I think not.

Q. Do you remember whether you were a member of the board of directors at the time the depositors' committee was in existence in December, 1907?

A. I couldn't be sure.

Q. Was Mr. Claypool a member of the board of directors of the Tanana Electric Company?

A. I think he was the president of the company, and naturally would be a director.

Q. Was he not vice-president?

(Testimony of James W. Hill.)

A. Vice-president, yes, sir. Mr. Chilberg was president. [717]

Q. Was Mr. Wood a member of the board of directors? A. I think not.

Q. Was Mr. Jonas? A. I think so.

Q. Was Mr. Ryan? A. I think not.

Q. Now, Mr. Jonas and Mr. Claypool were members of the board of directors of the Tanana Electric Company, and they were also members of the depositors' committee, and they subsequently became directors of the Fairbanks Banking Company, a corporation, did they not?

A. Yes, sir. I don't know that they were members of the board of trustees of the Tanana Electric Company as late as the fall of 1907.

Q. Now, you remember, do you not, that the note of \$25,000 that was given by the Tanana Electric Company out of which this disputed account arose, was signed by Claypool, as vice-president?

A. I do. That is right.

Q. You referred in your testimony to some of the things that induced you to believe that the Scandinavian-American Bank was guaranteeing the advancements to the Tanana Electric Company.

A. Yes, sir.

Q. And, among those things, you referred to a clause in the subscription. I wish you would examine this paper, and tell me whether this is the subscription that you refer to. (Hands paper to witness.)



(Testimony of James W. Hill.)

A. The subscription, or the paper of authority—of guaranty?

Q. You referred to a subscription which you said contained a condition upon which the subscription was had?

A. That is the original subscription list. [718]

Q. That is the one that contains the condition that you refer to?

A. No. There was another paper besides that.

Q. Another subscription?

A. No. But another document.

Q. You referred to a subscription which contained a condition about the advancement of \$100,000 by the Scandinavian-American Bank for water power?

A. And I also referred to a document that was signed by Mr. Chilberg as vice-president of the Scandinavian-American Bank.

Q. This is the subscription list that you referred to? A. Yes, sir.

Q. Is there anything in there that says that the Scandinavian-American Bank will advance \$100,000?

A. Not in that.

Q. You are mistaken, then, when you said there was a condition in the subscription that the Scandinavian-American Bank would advance \$100,000? A. It is not on that subscription paper.

Q. The agreement that you referred to in your testimony, what was that agreement; tell me something about that?

A. I don't remember the wording of it, now.

Q. Can you remember what kind of paper it was

(Testimony of James W. Hill.)

on? A. I think it was a single sheet of paper.

Q. Typewritten? A. I think so.

Q. Who were the parties to that agreement?

A. I think the Scandinavian-American Bank by its vice-president, setting forth the manner in which the money should be advanced by the Scandinavian-American Bank? [719]

Q. Any other parties sign it? A. I think not.

Q. Do you remember there was a mortgage given by the Tanana Electric Company to the Scandinavian-American Bank in the sum of \$100,000?

A. Yes, sir. I do.

Q. And afterwards a certain memorandum of agreement was entered into between the Scandinavian-American Bank and the Tanana Electric Company which became a part of that mortgage? Is that the agreement that you refer to? A. No. No.

Q. The original paper that you refer to, you say was in the hands of Mr. Claypool the last time you saw it?

A. I think he had it the last time I saw it.

Q. Attached to the petition of intervention on the part of the Scandinavian-American Bank in the case of the Fairbanks Banking Company vs. The Tanana Electric Company, beginning at the bottom of page 5 is set out a certain agreement. I wish you would examine that agreement and tell me if that is the agreement that you refer to. (Hands paper to witness.)

A. No. I don't think that is the agreement.

Q. You don't think that is the agreement?

(Testimony of James W. Hill.)

A. No, I don't think so, Mr. Rider. (Returns same to Mr. Rider.)

Q. As I understand you, the Fairbanks Banking Company began making certain advances to the Tanana Electric Company in the year 1906—

A. 1907.

Q. —1907, and when those advances reached the sum of \$18,500, you took from the Tanana Electric Company a note in that amount payable to the Scandinavian-American Bank? Is that right?  
[720]

A. That is partly right.

Q. Wherein am I incorrect?

A. We took the note from the Tanana Electric Company after we had telegraphed to Mr. Chilberg or to the Scandinavian-American Bank.

Q. You first made the advancement of \$18,500 scattered over a period of time—

A. Or the major portion.

Q. —and then advised the Scandinavian-American Bank to that effect?     A. Yes, sir.

Q. Then they replied by wire?     A. Yes, sir.

Q. And directed you to take the note of the Tanana Electric Company in that amount?     A. Yes, sir.

Q. And you did so?     A. Yes, sir.

Q. And took the note payable to the Scandinavian-American Bank?     A. Yes, sir.

Q. Subsequent to that transaction, the Scandinavian-American Bank gave the Fairbanks Company credit for \$18,500, and they took the note.

A. That is correct.

(Testimony of James W. Hill.)

Q. Then, the matter run along until you had made another bunch of advances? A. Yes, sir.

Q. Aggregating \$25,000, done in the same way?

A. Exactly.

Q. After that total had been advanced, you again wired the Scandinavian-American Bank, advising them that these advances had been made?

A. Yes, sir.

Q. And they again instructed you to take a note? [721]

A. That was the second time, yes, sir.

Q. They again instructed you to take *an* note from the Tanana Electric Company, payable to the Scandinavian-American Bank in the sum of \$25,000?

A. Yes, sir.

Q. And you didn't take that note until you got instructions from the Scandinavian-American Bank?

A. That is my recollection, yes, sir.

Q. There was no charge made on the books of the Fairbanks Banking Company against the Scandinavian-American Bank until you received these advices from them? A. That is my recollection.

Q. Then, when you took this second note, you forwarded it to the Scandinavian-American Bank and they advised you that credit would be given for it, or was given for it? A. That is my recollection.

Q. Then the matter was put on the books of the Fairbanks Banking Company after you received that advice? A. Yes, sir.

Q. After taking that note, you continued making advances to the Tanana Electric Company—

(Testimony of James W. Hill.)

A. Yes, sir.

Q. —until you had advanced the amount that is in controversy some \$30,000?     A. That is correct.

Q. Now, during the time that those advances were made, or I mean, immediately following the time that those advances were made in that amount, you received notice from the Scandinavian-American Bank to make no further advances, didn't you, by telegram?

A. After we had wired that we had made certain advances, and must decline to make further advances unless they credited [722] our account with that amount of money.

Q. You wired to the same effect that you had with regard to the other two?     A. I think so.

Q. That you had made these certain advances?

A. Yes.

Q. And they wired back to make no further advances?     A. Yes.

Q. Do you remember the date of that wire?

A. I do not. The wire is in the bank, or in evidence. It speaks for itself. It was in November, wasn't it?

Q. Here is a telegram of the 10th of November, 1907, addressed to the Fairbanks Banking Company from Mr. Chilberg. It says (Reads): "Advance nothing more Tanana Electric Co."     A. Yes, sir.

Q. That is the communication you received on November 10th?     A. Yes, sir.

Q. That telegram was followed by a letter from Chilberg upon this same subject?



(Testimony of James W. Hill.)

A. Yes. We did receive a letter.

Q. Here is a letter from Mr. Chilberg dated November 9, 1907, addressed to the Fairbanks Banking Company, and which has been received in evidence as Plaintiff's Exhibit "I." Is that the letter that you received, explaining the matter, from Chilberg? (Hands same to witness).

A. Yes, sir. That is the letter.

Q. That letter is marked; "Received December 3/7 by the Fairbanks Banking Company."

A. Yes, sir.

Q. That is about the date that you received it here?

A. I judge so, if the stamp was right. [723]

Q. Then it was known to the members of the Fairbanks Banking Company, a partnership, that the Scandinavian-American Bank declined to protect the bank in the advances aggregating \$30,000, prior to the time that the depositors committee was appointed? A. Oh, yes.

Q. And long prior to the time that the directors of the Fairbanks Banking Company, a corporation, bought the assets of the partnership. A. Oh, yes.

Q. When the depositors committee—(Interrupted).

Mr. McGINN.—I think those documents speak for themselves. This is just the conclusion of the witness. It says "We will not advance any more money." I don't see how they could draw that inference.

Mr. RIDER.—The witness drew it.

WITNESS.—I didn't understand that question.

(Testimony of James W. Hill.)

Mr. McGINN.—I move that it be stricken out as a conclusion of the witness upon a written document, which is for the Court to determine, and not the witness.

The COURT.—Motion denied.

Mr. RIDER.—Q. Was it explained by you or by Captain Barnette to the depositors committee that you had such communication from the Scandinavian-American Bank?

A. Everything was shown to the committee.

Q. You showed that to the depositors committee?

A. Yes, sir.

Q. Showing that the Scandinavian-American Bank had repudiated the guaranty? [724]

A. I wouldn't say that they had repudiated the guaranty. They had simply said they would make no further advances on account of the financial conditions at that time.

Q. This is the correspondence that was shown to the depositors committee?

A. It must have been. The whole circumstances of that was gone into in detail.

Q. In connection with that, you say there was also shown to the depositors committee some instrument in writing, and you say the last you saw of it was in the possession of Mr. Claypool. A. Yes.

Q. It was also shown? A. Yes, sir.

Q. And it was known to the depositors committee that this account was in dispute, and the liability of the Scandinavian-American Bank was in dispute.

(Testimony of James W. Hill.)

Mr. McGINN.—That is calling for the opinion of the witness.

The COURT.—The witness may answer.

A. No. I wouldn't say that the liability of the Scandinavian-American Bank was ever in dispute, nor did the depositors committee think so.

Q. Do you mean that; "ever in dispute"?

A. At that time certainly not.

Q. It did become a matter of pretty serious dispute?

A. It might have. But at that time there was no question in my mind, nor in the minds of the depositors' committee, but that that was a legal obligation and one that would be taken care of by the Scandinavian-American Bank. [725]

Q. You had absolutely no doubt of that in your mind.

A. In fact, to go back a little. When Mr. Wood was in Seattle Mr. Chilberg promised to make that credit to our account, but subsequently declined, stating he couldn't do it then; that the directors had shut down absolutely on all loans.

Q. While Wood was there he did get that promise out of Chilberg?

A. Yes, sir, and he so wired us.

Q. And the next day he wired that Chilberg had declined to deal with you? A. Yes, sir.

Q. That was all before the incorporation of the bank? A. Yes.

Q. You wrote a letter on November 25, 1908, to E. S. McCord of Seattle, Washington, a big, long 13

(Testimony of James W. Hill.)

page letter, explaining this Tanana Electric transaction to him as the attorney from the bank?

A. As the attorney from the bank?

Q. As attorney for the bank.

A. No. He was never attorney for the bank.

Q. This was to Mr. McCord about bringing a suit out there for the Fairbanks Banking Company against the Scandinavian-American Bank.

A. It probably was.

Q. In this letter did you not use this language? Have you seen this letter recently?

A. I have not seen it recently.

Q. Would you like to examine it?

A. I would. Yes.

Q. At the time you wrote this letter the matter was fresh in your mind, in November, 1908. [726]

A. It probably was.

A. Much fresher than it is today.

A. It would be. Yes. (Witness takes letter.)

Q. You have read the letter I referred to?

A. Yes, sir.

Q. I will ask you if you did not state in that letter (Reads):

“Some days ago we received a wire from our president, Capt. E. T. Barnette, stating that the Scandinavian-American Bank had refused to settle for some advances made by us to the Tanana Electric Co. which were made by us on the strength of the Scandinavian-American Bank holding a mortgage from the Tanana Electric Co’’. A. The letter so states.

Q. That your advances were made upon the

(Testimony of James W. Hill.)

strength of the Scandinavian-American Bank holding a mortgage from the Tanana Electric Company Does not the letter continue further, thus? (Reads):

“Mr. Chilberg’s report, after having apparently gone over the situation thoroughly, was a very flattering one and looked like a very good investment particularly as one of the conditions of our subscribing stock here was that he would arrange with his bank in Seattle for a loan up to \$100,000 for the purpose of installing a water power plant”. A. Yes, sir.

Q. (Again reading from letter.)

“I might explain here that previously the Scandinavian-American Bank had entered into an agreement with the Tanana Electric Company in consideration of their receiving first mortgage that they would advance up to \$100,000 for the installation of a water plant in amounts as required. The amount of \$18,500 above [727] referred to was the first installment according to this agreement”.

A. I think I remember that.

Mr. RIDER.—This is a very long letter, 13 pages, and I am willing to read the entire letter if you want to hear it, or, if the Court desires, I can read from it the parts that are important.

The COURT.—Has that letter been introduced in evidence?

Mr. RIDER.—Not yet. But I will introduce the entire letter if the Court desires to hear it all.

Mr. McGINN.—You can pick out what parts you want, and not needlessly incumber the record.

Mr. RIDER.—(Reads):



(Testimony of James W. Hill.)

“In hearing no reply to our telegram of April 24, 1907, we accordingly wired on April 29th as per enclosed copy, and on April 30th received a reply stating that they would give us a credit of the amount required. The last mentioned telegram was confirmed in their letters of April 30th and May 1st, copies of which are also enclosed.”

“On September 2, 1907, we again telegraphed Mr. Chilberg in care of the Scandinavian-American Bank as per enclosed copy stating that the Tanana Electric Co. had deposited with us a second note of \$25,000, to be handled in the same manner as the first transfer of \$18,500. On September 7th we received his reply asking us to accept note and make advances accordingly. This was done.

Some few weeks later by which time the credit of \$25,000 was exhausted, Mr. Richmond, manager of the Tanana Electric Co., left here for Seattle and San [728] Francisco and before leaving had a conversation with our Mr. Wood, Cashier, in which he asked Mr. Wood to take care of the checks of the Tanana Electric Co. and that when he arrived at Seattle he would make arrangements with the Scandinavian-American Bank to have them transfer the balance of the \$100,000, namely \$56,500 as he figured that it would take that amount and probably more to complete the work.”

That is right, in your letter?      A. Yes, sir.

Q. (Further reading.)

“Of course we were not sure whether the Scandinavian-American Bank would advance the amount

(Testimony of James W. Hill.)

in excess of the balance of \$56,500, but very naturally took for granted that they would fulfill their agreement to the amount of \$56,500."

You were taking that for granted?

A. Yes, sir.

Q. The agreement referred to there is the agreement between the Tanana Electric Company and the Scandinavian-American Bank?

A. I presume so.

Q. (Continues reading):

"Mr. Richmond replied to the secretary's wire stating that Mr. Chilberg was absent in the east but was expected to return in about ten days, at which time he would then arrange matters. Meantime it was necessary for him to go to San Francisco on account of the sickness of a relative but he apparently proposed returning by the time Mr. Chilberg would get back. Meantime we were still taking care of the checks of the Tanana Electric [729] Co. with the assurance of the local board of trustees of the Tanana Electric Co.; that we were amply protected and that we would be reimbursed when the transfer of the balance of \$100,000 would be made by the Scandinavian-American Bank."

A. That is correct, and it was according to the letter.

Q. That is correct, isn't it?

A. I think so. I might break in here and say that at all times the board of trustees felt that we were protected by this same document that I maintain I saw at one time.

(Testimony of James W. Hill.)

Q. Is that document referred to in this letter?

A. I don't believe so.

Q. You have just read the letter?      A. Yes, sir.

Q. Is that document referred to in this 13 page letter?

A. I speak there of enclosing copies of all of the correspondence, and that document may have been in the nature of a letter.

Q. That document would not be correspondence between your bank and the Scandinavian-American Bank?

A. No, but it was probably a letter from J. E. Chilberg, as vice-president of the Scandinavian-American Bank to the Tanana Electric Company.

Q. You have recited the details of this transaction in the body of the letter?      A. Yes, sir.

Q. And nowhere in there have you referred to an agreement between the Scandinavian-American Bank and the Fairbanks Banking Company to protect these advances, have you?

A. That is correct.

Mr. RIDER.—(Continues reading):

“On November 6, 1907, we had a telegram from the Scandinavian-American [730] Bank informing us that our account with them was overdrawn and on November 7th we answered as per enclosed extract stating that we did not know that our account was overdrawn and presumed that Mr. Richmond had arranged a deposit for account of Tanana Electric Co. for \$69,000.

In connection with the refusal of the Scandinavian-

(Testimony of James W. Hill.)

American Bank to come through with the balance of \$100,000 as per their mortgage, we enclose extract of letter from Mr. Chilberg under date of Nov. 9th, reviewing the financial situation at that time and explaining why they had discontinued advances to the Tanana Electric Co. on their mortgage."

That letter is the letter that was presented to your view a moment ago, from Mr. Chilberg, is it not?

A. Yes, sir.

Mr. RIDER.—(Continues reading):

"I have tried to explain the matter intelligently and hope that you will be able after reading same to grasp the situation. It may be that the Scandinavian-American Bank will fight the matter on the contention that they did not authorize this bank to make any advances for the Tanana Electric Company, but we think that we can satisfy any Court that Mr. Chilberg as an officer of the Scandinavian-American Bank was perfectly aware that we were taking care of the checks of that company feeling that we were fully protected by their mortgage."

That is the report you made upon it, isn't it?

A. Yes, sir.

Mr. RIDER.—(Continues reading):

"We are at a loss to know why the Scandinavian-American [731] Bank did not make the two credits one of \$18,500 and the other of \$25,000—at the time, they informed us that they had done so but in as much as they allowed interest, we have no complaint to make on that score." A. Yes, sir.

Mr. RIDER.—(Reading):

(Testimony of James W. Hill.)

“In advancing these two amounts in our estimation they established a precedent which would be hard to get around at this time but you are a lawyer and will look at the matter from an impartial view point.” A. Yes, sir. [732]

Q. That was your report of the grounds on which the Fairbanks Banking Company made its claim against the Scandinavian-American Bank, and the report that you made to the man you were expecting to employ as attorney to present your claim for you, is it not? A. Yes, sir.

Q. This letter is dated November 25, 1909?

A. Yes, sir.

Q. That is long after the incorporation of the bank? A. Yes, sir.

Q. Now, when the note of the Tanana Electric Company, which evidences these advancements in dispute aggregating about \$30,000, was taken, that note was taken payable to the Fairbanks Banking Company, was it not? A. Yes, sir.

Q. And none of the other notes arising out of advances were taken payable to the Fairbanks Banking Company? A. That is so.

Q. But, on the other hand, were payable to the Scandinavian-American Bank? A. That is so.

Q. Was any stock which the bank took up during the time you [733] were a member of the board of directors or a member of the executive committee sold at public sale? A. No, sir.

Q. Was any advertisement of the fact that the stock was to be taken up made?



(Testimony of James W. Hill.)

A. Not by us, no.

Q. You spoke about a credit on the books of the bank in the matter of the Scandinavian-American Bank of some nine or ten thousand dollars.

A. Yes, sir.

Q. That had nothing to do with this \$30,000 item that was in dispute?

A. It was undoubtedly an advance to the payment of our drafts, pending some disposition of that credit.

Q. That credit didn't get on the books of the Fairbanks Banking Company? You never took credit on the books of the Fairbanks Banking Company for this \$30,000 advancement? A. No.

Q. You had a checking account against the Scandinavian-American Bank?

A. We drew against that credit, and they honored our drafts up to that amount.

Q. They honored your drafts until you became indebted to some \$10,000 without any reference to this deposit item.

A. How do you mean; without any reference?

Q. It was not included in the balance that is evidenced by this nine or ten thousand dollars, was it? You didn't charge it against the Scandinavian-American Bank? A. The nine or ten thousand dollars?

Q. The \$30,000 wasn't included in that account at all which finally showed a credit of nine thousand dollars? [734]

Q. We simply continued to draw against them, without making the actual credit.

(Testimony of James W. Hill.)

Q. And you were drawing against their arrangement with the Scandinavian-American Bank to make advances for you? A. Oh, yes.

Q. That is, to honor your drafts when sent outside, and honor your transfers.

A. We had no arrangement at that time for any credit with the Scandinavian-American Bank.

Q. You had none?

A. I mean for a bank credit.

Q. At the time—

A. They were drawing those drafts.

Q. At the time these items were drawn which aggregated \$9,000? A. I think not.

Q. They were extending you credit?

A. Yes. They were extending us credit.

Q. That credit wasn't connected in any way with the advances on behalf of the Tanana Electric Company? A. No.

Q. You stated it was understood at the time these stock surrenders were made that it was expected that that stock would be reissued. A. Yes, sir.

Q. As a matter of fact, there was never a reissue of any stock of the Fairbanks Banking Company, excepting \$1,000 worth, was there, after Mr. Wood surrendered his stock? A. I don't know as to that.

Q. You have examined —(Interrupted).

A. I didn't keep the stock ledger. [735]

Q. And you haven't examined the statement of the treasury stock that has been introduced in evidence? A. No.

Q. In the minutes of the directors' meeting of

(Testimony of James W. Hill.)

March 12, 1908, in which are embodied as a part thereof certain minutes of the stockholders and proposed stockholders, there appears a reference to the matter of taking over the assets of the Fairbanks Banking Company. You are familiar with that, are you? A. I have read those minutes.

Q. In which it is stated that those assets exceed the liabilities, as shown by the depositors committee, in the sum of \$288,000? A. Yes, sir.

Q. When the corporation did finally take over the assets of the partnership, they only took them over on an excess of \$252,000? A. That is correct.

Q. Why was it that they were not taken over on a basis of \$288,000?

A. Because we probably didn't have as many notes and securities in the bank on March 16th as we had on December 12th, or the securities had changed in the interval. We were doing business right along.

Q. But you would have something else in place of them?

A. Undoubtedly, unless we wrote off some of those notes. I think we charged off some notes on December 31st.

Q. Enough to aggregate this difference?

A. Probably not.

Q. Enough of the notes that were to be transferred to the corporation to cover the difference?

A. Probably not. I wouldn't want to say that.  
[735½]

Q. Can you think of any other reason that you

(Testimony of James W. Hill.)

didn't take it at \$288,000 as proposed by the board of directors?

A. I can't at the present time. You understand they came in and took what securities they wanted, and set aside others which remained the property of the partnership.

Q. Yes, but the resolution passed by the board of directors was that the property was to be taken over on the bases of the examination made by the depositors committee, was it not?     A. Yes.

Q. And their committee reported that there was an excess of \$288,000.     A. That is so.

Q. But when you did take it over, you took it over on a basis of \$252,000.     A. That is so.

Q. The only explanation you can give for the deficiency is what you have given.

A. I think so; probably retired some notes.

Mr. RIDER.—That is all.

Redirect Examination.

(By Mr. McGINN.)

Q. Mr. Hill, I will ask you to state whether or not the board of directors or the stockholders received any telegrams from Mr. Chilberg relative to the value of Gold Bar about the time it was turned over to the corporation?

A. About March 12th or thereabouts?

Q. I don't know the time. Somewhere about there.

A. I don't remember whether the board as a board received any telegram, or whether some one of the directors did. But I [736] know that a telegram

(Testimony of James W. Hill.)

came from Mr. Chilberg.

Q. In regard to what?

A. There was a telegram from Mr. Chilberg about that time in regard to the value of Gold Bar in his opinion.

Q. Do you know where that telegram is?

A. I do not, unless it is in the bank.

Q. We have asked them for the telegram, and have not been able to find it, so I want to ask you if you can give the contents of that.

A. I cannot, but it stated a value in his opinion on Gold Bar.

Q. Do you know whether there was also a telegram received from Carl Johanson?

A. Mr. Jonas received a telegram from Carl Johanson.

Q. Do you remember the contents of that telegram?

A. No, I don't now. They were all apparently satisfactory to the board. They were all produced at the time.

Q. Do you know whether they were produced at this meeting of the board of directors?

A. I wouldn't be sure as to that.

Q. Now, at the time this stock was originally subscribed, do you know whether it was over-subscribed or not?

A. My recollection is that at the very first meeting of the proposed stockholders, they over-subscribed it—the capital stock, and were asked at that time to reduce their subscriptions, in order to keep the



(Testimony of James W. Hill.)

amount within the proposed capital stock.

Q. Did you at any time act, or pretend to act, for Mr. R. C. Wood under this power of attorney that has been mentioned here in reference to the subscription for any stock for him in the Fairbanks Banking Company, a corporation?      A. No, sir.

Q. Never at any time?

A. No, sir. [737]

Q. Now, these assets that you state were in the possession of the trustees; they were in the possession of Mr. Dusenbury as register, were they not?

A. Yes.

Q. And he was also acting as assistant cashier of the bank at that time?      A. Yes, sir.

Mr. McGINN.—Minutes of the meeting of the executive committee of the Fairbanks Banking Company held at Fairbanks, Alaska, March 15, 1909. I desire to introduce the following (Reads):

“The following requests from stockholders as to the bank purchasing their stock was considered: H. B. Parkin 10 shares, O. E. Tackstrom 5 shares. It was the sense of the meeting that the bank observe the rule established at a previous meeting of the board wherein it was decided not to buy in any more of the bank’s stock.”

I desire to introduce and read from the minutes of the meeting of the board of directors of the Fairbanks Banking Company held at Fairbanks, Alaska, April 12, 1909 (Reads):

“The minutes of the meetings of the executive committee held on the following dates were read,

(Testimony of James W. Hill.)

and, on motion duly made and seconded, were approved, ratified and passed as the action of the board; March 13, 15 and 18, 1909." That is all.

Further Cross-examination.

(By Mr. RIDER.)

Q. Do you remember the date, Mr. Hill, when the telegram which you were inquired about to Mr. Chilberg was sent or received?

A. It was in November sometime. I don't remember the date. [738]

Q. You are talking about the Tanana Electric Company now, are you not? But you were asked by Mr. McGinn about the telegram being sent to Chilberg? A. In regard to the value of Gold Bar?

Q. Yes. A. It was in the latter part of March.

Q. At the same time these other telegrams were sent to Wood and to Dexter Horton?

A. On or about the same time.

Q. I believe you stated you didn't remember the reply. A. I did not.

Q. Do you remember whether there was any reply or not? A. I am sure—reasonably sure there was.

Q. You are sure there was a reply promptly?

A. I think so.

Q. Do you remember whether the reply got back here by the 14th of March?

A. I couldn't state. There were telegrams produced by Mr. Jonas, and I think they had been sent by him, not by the bank or any officer.

Q. Telegrams sent by Jonas?

A. Yes, sir, I think so.

(Testimony of James W. Hill.)

Q. Do you remember any action that was taken by the bank in reference particularly to the Chilberg telegram?     A. I do not.

Q. I desire to call your attention to a telegram as found in copy book 4 at page 208, dated Fairbanks, Alaska, March 14, 1908, and addressed to R. C. Wood, and signed Fairbanks Banking Company, and ask you if that has any relation to the matter that you are now testifying about (exhibits same to witness).  
[739]

A. The telegram I had in mind was sent, I think, by Jonas to Mr. Chilberg.

Q. Did Mr. Chilberg reply?     A. Yes, sir.

Q. Does this telegram here help you out any as to what Chilberg's answer was?     A. No.

Q. Do you know of the sending of this telegram that is referred to here?     A. I don't remember.

Q. You have no knowledge of this telegram yourself.

A. No, I don't remember sending that telegram.  
Mr. RIDER.—That is all.

Further Redirect Examination.

(By Mr. McGINN.)

Q. Mr. Hill, you remember of Mr. Wood returning in April, 1908, from the states?     A. I do.

Q. Do you remember the time that he signed this agreement of March 16, 1908,—this assignment and transfer of the property from the partnership to the corporation?

A. You mean the actual time the agreement was signed by Mr. Wood?

(Testimony of James W. Hill.)

Q. By Mr. Wood.      A. I think I was present.

Q. Do you remember about what time that was?

A. No.

Q. Who else was present at that time that you remember?      A. I couldn't say for sure.

Q. Well, can you tell of anybody who was present?

A. Captain Barnette was present, and I think one or more of the members of the executive committee.

Q. What transpired at that time? [740]

Mr. RIDER.—Objected to as irrelevant, incompetent and immaterial.

The COURT.—Objection overruled, subject to the objection.

A. Mr. Wood raised some objection to signing, I think.

Mr. MCGINN.—Q. What objection was made and what was done and said?

A. Well, I could not repeat the conversation. But in a general way, he objected to the signing of the agreement, because it set forth that he had subscribed for stock. And then and there the executive committee, or some member of the executive committee, assured him, or called his attention to the minutes of the meeting held in January, at which it was agreed by the original stockholders that Wood and myself could have cash in lieu of stock, if we elected, up to July 1st, and he finally signed the agreement with that understanding.

Q. What minutes?      A. January 5th, I think.

Q. Do you know where these minutes were incorporated at that time?

(Testimony of James W. Hill.)

A. They were set forth in the agreement itself, as I remember.

Q. Were they set forth in the agreement, or in the by-laws of March 12th?

A. In the agreement, I think, was set forth the minutes of a previous meeting.

Q. The minutes of March 12th?      A. Yes, sir.

Q. You say that was shown to him at that time.

A. Yes, sir.

Q. State whether or not he signed it then?

A. He signed it then.

Mr. McGINN.—That is all.

Further Cross-examination.

(By Mr. RIDER.)

Q. You say the original contract was then before Mr. Wood? [741]      A. Yes, sir.

Q. And that written contract contained a clause that he should take stock?      A. It did.

Q. And that was called to Mr. Wood's attention, or he called it to the attention of the executive committee?

A. He called it to the attention of the executive committee.

Q. Then these minutes which you referred to were presented to him.      A. Yes, sir.

Q. Then he signed that written contract.

A. Yes, sir.

Q. And which contained that clause that he would take stock.

A. Yes. With the understanding—(interrupted).

Mr. RIDER.—That is all.



(Testimony of James W. Hill.)

Mr. McGINN.—Let him finish his answer.

A. With the distinct understanding that he and I, for our part of it, still had the privilege of taking cash in lieu of stock. I elected to take stock.

Mr. RIDER.—But you knew, and he knew, at that time—(interrupted). A. Yes, sir.

Q. —that in the written agreement was the provision that he should take stock. A. Yes, sir.

Mr. RIDER.—That is all.

Mr. McGINN.—That is all. [741½]

[Testimony of Volney Richmond, for Defendants.]

VOLNEY RICHMOND, witness for defendant, after being duly sworn, testified as follows, to wit:

Direct Examination.

Mr. McGINN.—Q. What is your name?

A. Volney Richmond.

Q. What is your occupation?

A. Superintendent Northern Commercial Company.

Q. How long have you been connected with the Northern Commercial Company?

A. Since its organization in 1901.

Q. What is the business of the Northern Commercial Company? A. Merchandise.

Q. Where are they engaged in business?

A. Throughout Alaska; the Yukon River and tributaries.

Q. They have a station at Fairbanks, Alaska?

A. At Fairbanks, yes, sir.

Q. How long have you been connected with them?

(Testimony of Volney Richmond.)

A. Since 1901.

Q. What position did you occupy with relation of the Northern Commercial Company in the month of April, 1910?

A. I was the local agent of the Northern Commercial Company in 1910 at Fairbanks.

Q. How long had you been in that position?

A. Since the 15th of March, 1905.

Q. I will ask you to state whether or not in that position you became acquainted with the local merchants of the Fairbanks Recording District, and the miners of the district.      A. I was.

Q. And to state whether or not you became acquainted with the financial standing and credit of some of them.

A. I was acquainted with it. [742]

Q. In the month of April, 1910, were you acquainted with C. J. Robinson?      A. I was.

Q. Do you know what his standing was in the community at that time?      A. Good financially.

Q. I will ask you to state whether or not in your opinion you would regard his note for the sum of \$3,105 as a good note.

A. I would. We have given him credit for that amount at that time, or about that time, and more.

Q. You regarded him good for that amount at that time?      A. I did.

Q. April, 1910?      A. April, 1910.

Q. O. E. Tackstrom. Were you acquainted with Oscar Tackstrom?      A. I was.

Q. What business was he engaged in in 1910?

(Testimony of Volney Richmond.)

A. In April, 1910, I think he was a partner of James Thornton in the establishment of Thornton & Tackstrom.

Q. You knew what his financial standing was at that time?     A. It was good.

Q. Would you say that his note for the sum of \$375 was a good note at that time?     A. I would.

Q. T. L. Thurston. This note is secured. You know where Mr. Thurston lived here in 3d Avenue?

A. I did.

Q. Where Lovejoy lives now. You knew what his financial standing was in April, 1910?

A. Thurston's?

Q. Yes.     A. What is the amount of the note?

Q. \$950.00, and it is secured by a mortgage on lot 9 block 1 east, between 3d and 4th avenues, upon the property that we [743] have just mentioned.

A. The house that he lived in at that time, the Lovejoy house?

Q. Yes.

A. The property was worth that amount of money.

Q. In April, 1910?     A. In April, 1910.

Q. Do you know T. C. Brown?     A. Yes, sir.

Q. How long had you known T. C. Brown?

A. T. C. Brown worked for the Northern Commercial Company for about three years.

Q. In what capacity?     A. Carpenter.

Q. Were you acquainted with his financial standing in the month of April, 1910?     A. I was.

Q. Do you know whether his note in the sum of \$500 was good at that time?     A. It was in 1910.

(Testimony of Volney Richmond.)

Q. And you would so regard it?     A. I would.

Q. The note at that time was \$600.

A. Brown was good for \$600 or more at that time.

Q. E. M. Keyes. Were you acquainted with Mr. Keyes in April of 1910?     A. I was.

Q. How long had you known Mr. Keyes?

A. I had known Mr. Keyes at that time for probably three or four years.

Q. What was his occupation?     A. Miner.

Q. Were you acquainted with his financial standing at that time? [744]

A. We were doing business with him, and necessarily were.

Q. I will ask you to state whether or not in your opinion his note for the sum of \$2,400.00 would be considered good in April, 1910?

A. I would so consider it, yes.

Q. Did you know Wiseman & Barclay? Frank Wiseman, who is now chief of police?     A. Yes.

Q. Were you acquainted with Wiseman & Barclay in April, 1910?     A. Yes, sir.

Q. And acquainted with their financial condition at that time?     A. Yes, I was.

Q. I will ask you to state whether or not you would regard their note for \$1543.73 as good in April, 1910?

A. They got in financial difficulties, but I think it was after that date. I think at that date they were good.

Q. Are you acquainted with H. I. Miller?

A. Yes, sir.

Q. You knew him in April, 1910?     A. I did.

(Testimony of Volney Richmond.)

Q. I will ask you to state whether or not you were acquainted with his financial condition at that time, and his financial standing?     A. We were.

Q. I will ask you whether you would regard his note for the sum of \$1546.00 as good in April, 1910?

A. I think in April, 1910, it was good. I think Miller got in trouble the following summer.

Q. Were you acquainted with Sandstrom, Gaidos and Gillis?     A. I was.

Q. Did you know their financial standing in the month of April, 1910?

A. I considered them good at that time. [745]

Q. Would you consider them good for the sum of \$1530?     A. I would.

Q. Do you know Stone & Brandt?

A. I did or do.

Q. Did you know what their financial standing was in the month of April, 1910, and prior thereto— in the month of September, 1909, also?

A. They were considered good. In September, 1909, they were considered good.

Q. Would you say their note for \$4,668.00 was considered good at that time?

A. At that time, yes.

A. Do you know Ray Brumbaugh?     A. I do.

Q. How long have you known Mr. Brumbaugh?

A. Since 1905.

Q. What business was he engaged in here?

A. Mercantile.

Q. Brumbaugh Hamilton & Kellogg?

A. Yes, sir.



(Testimony of Volney Richmond.)

Q. Were you acquainted with their financial standing in the month of April, 1910? A. Yes.

Q. I will ask you to state whether or not you would consider the note of Ray Brumbaugh in the sum of \$7,762.50 as good in the month of April, 1910?

A. I would consider it good.

Q. Do you know Robert Sheppard? A. I do.

Q. What was his business? A. Miner.

Q. Engaged in mining on Fairbanks Creek?

A. On Fairbanks Creek.

Q. Were you acquainted with his financial standing in April, 1910? A. I was. [746]

Q. I will ask you whether or not you would consider his note for the sum of \$1,700.00 as being good in April, 1910? A. Perfectly good.

Q. Do you know J. A. Jackson? A. I did.

Q. He was cashier of the Fairbanks Banking Company. Were you acquainted with his financial standing in the month of April, 1910?

A. Not to any great extent.

Q. I will ask you whether or not you would consider his note for the sum of \$500.00 good at that time?

A. It should have been good for \$500. He was drawing a good salary.

Q. Did you know L. S. Robe? A. I do.

Q. Were you acquainted with his financial standing in this community in the month of April, 1910?

A. I was acquainted with it, yes, sir.

Q. I will ask you to state whether or not you would consider his note for the sum of \$750.00 as good at

(Testimony of Volney Richmond.)

that time?     A. I would so consider it.

Q. Did you know Lew Wing?     A. I did.

Q. Were you acquainted with his financial standing in the month of April, 1910?

A. Not any more than from a salary standpoint.

Q. I will ask you to state whether or not you would regard his note for the sum of \$1500 as good?

A. I would consider it good.

Q. Were you acquainted with Harry Johnson?

A. I was.

Q. What was his business?     [747]

A. Miner on Cleary Creek, and afterwards on Goldstream.

Q. And afterwards went to Iditarod?

A. Afterwards in the Iditarod.

Q. Were you acquainted with the financial standing of Harry Johnson in the community in the month of April, 1910?     A. I was.

Q. I will ask you to state whether or not in your opinion you would reward his note for the sum of \$1,200.00 as being good in April, 1910?

A. I would consider it good.

Q. Do you regard past due paper as not good?

A. Not necessarily.

Q. What is your opinion in regard to past due paper?

A. Past due paper may be perfectly good, and other past due paper may be worthless.

Q. Just the same as paper that is not due may be good—     A. Yes.

Q. —and some of it bad.     A. Yes.

(Testimony of Volney Richmond.)

Q. In your opinion does the mere fact that paper is past due affect the chances of the payment of the note in any way?

A. No, I wouldn't consider it so.

Q. Do you know whether or not the banks of Fairbanks, Alaska, were in the habit of carrying past due paper?     A. I don't know.

Q. State whether or not you know that the banks carried the miners here for some time.

A. Yes, they did. [748]

Q. Mr. Richmond, were you acquainted with Mr. Ed. Chilberg?     A. I was.

Q. Were you acquainted with the Tanana Electric Company?     A. I was.

Q. You were manager of the Tanana Electric Company for a while, were you not?

A. I was appointed manager, but I never took the active management.

Q. Do you remember the negotiations that were carried on by Mr. Chilberg and the Tanana Electric Company?     A. I do.

Q. In the year 1906?     A. I do.

Q. Relative to the obtaining of some money from the Scandinavian-American Bank?     A. I do.

Q. State the circumstances of that to the Court; what you know about it, and how you regard this claim of the Fairbanks Banking Company against the Scandinavian-American Bank on account of the transactions that occurred between Chilberg, the bank, and the Tanana Electric Company.

(Testimony of Volney Richmond.)

Mr. RIDER.—We object to how he regarded that, as incompetent.

The COURT.—Objection sustained. You should call for the facts.

Mr. MCGINN.—Q. Just state the facts in regard to it.

A. Mr. Chilberg arrived in Fairbanks in the summer of 1906, and at that time was heavily interested in the Tanana Electric Company. He got several people of Fairbanks interested in the company, and they subscribed for stock on the agreement of Mr. Chilberg of the Scandinavian-American Bank that he would advance \$100,000 for the bank for the building of the water power plant on the Chatanika for the Tanana Electric Company. The construction of the water power was commenced in the summer of 1907, and I don't [749] remember the exact amount expended. The checks were drawn on the Fairbanks Banking Company for the payment of wages and supplies. And during the fall— Just a moment. The advances were made by the Fairbanks Banking Company up to about the 22d or 23d of September, when I think all accounts at that time were taken care of. But a large number of men were still employed in the construction work, and it was understood that the Fairbanks Banking Company would continue to take care of the checks made payable for both labor and supplies.

Mr. RIDER.—Q. Understood by whom?

A. Understood by myself that the Fairbanks Banking Company would take care of these checks

(Testimony of Volney Richmond.)

until my arrival in Seattle when I would see Mr. Chilberg and arrange for the balance of the credit to be sent to the Fairbanks Banking Company. Mr. Chilberg wasn't in Seattle upon my arrival, but had gone east, and it was necessary for me to go to San Francisco immediately, and I wrote him, telling him I would return to Seattle later if necessary. Later the financial panic took place, and Mr. Chilberg advised me by wire that, owing to the financial condition, it would be impossible to advance anything at that time, and advised the appointment of a receiver for the Tanana Electric Company.

Mr. McGINN.—Q. Now, I will ask you, Mr. Richmond, whether or not with your knowledge of all the facts, you regarded this claim of the Fairbanks Banking Company against the Scandinavian-American Bank in the sum of some \$27,000, or something like that—a little more than that—as being a good and valid claim against the Scandinavian-American Bank in the month of April, 1910?

Mr. RIDER.—We object to that as incompetent.  
[750]

The COURT (To Mr. McGINN.).—You mean, all the facts he has detailed?

Mr. McGINN.—Yes.

A. I do. For the reason— (Interrupted.)

The COURT.—It is received, subject to the objection.

A. I do, for the reason that Mr. Chilberg of the Scandinavian-American Bank had agreed to advance to the Tanana Electric Company \$100,000.00,



(Testimony of Volney Richmond.)

and up to that time had advanced only \$43,000.

Mr. McGINN.—You may cross-examine.

Cross-examination.

(By Mr. RIDER.)

Q. You say you are the superintendent of the Northern Commercial Company at this time.

A. Yes, sir.

Q. In 1910 you were its local agent.

A. I was its local agent.

Q. Are you acquainted with Mr. George Preston, a defendant in this suit? A. I am.

Q. He is also connected with the Northern Commercial Company? A. Yes, sir.

Q. You are acquainted with Mr. Clark, who is a defendant in this suit? A. I am.

Q. He is one of the attorneys for the Northern Commercial Company at this time? A. Yes, sir.

Q. Mr. Richmond. You say you regard the notes which were listed to you—the notes given by the parties to whom your attention was called by Mr. McGinn, in the sums or amounts that he named, as being good in the month of April, 1910. A. Yes, sir.

[751]

Q. Was your attention called to the fact, or has your attention been called to the fact, that those notes were all past due in April, 1910? A. No.

Q. Was your attention called to the fact, or had you heard, that some of those notes were past due from one to three years? A. No.

Q. You were not aware of that?

A. No. I was not.

(Testimony of Volney Richmond.)

Q. Would that change your opinion as to the value of those notes in any way, in April, 1910?

A. Not as to those people.

Q. The fact that the notes were past due from 1 to 3 years wouldn't of itself in any way change your opinion as to the value of those notes?

A. No. For the reason; we were doing business with these people, and we considered them good in April, 1910.

Q. Did you have past due paper of their in April, 1910?

A. No, we don't carry past due paper. We don't handle paper.

Q. The Northern Commercial Company does not carry past due paper, does it?

Mr. McGINN.—He says they don't handle paper.

Mr. RIDER.—You showed he was in the banking business.

The COURT.—Objection overruled.

A. We don't handle paper.

Mr. RIDER.—Q. You don't handle any paper on your accounts? A. Not unless it is secured.

Q. But you require that paper to be paid at maturity, do you not, or taken up?

A. Not necessarily. [752]

Q. Is it your custom to allow paper to become past due from a year to three years?

A. We have had such.

Q. Is that your custom?

A. It is not the custom, no.

Q. Is it your custom to permit the accumulation

(Testimony of Volney Richmond.)

of as much as \$50,000 or \$80,000 of past due paper, and still carry it as a valid asset of the Northern Commercial Company?     A. No, sir.

Q. Referring to the note of Wiseman and Barclay for \$1,543.57, as listed to you by Mr. McGinn, you say that that note was good in April, 1910.

A. I said that I thought it was good in 1910. They got into difficulties, but I think it was the summer after.

Q. Isn't a fact that Wiseman and Barclay, in this Court were adjudged bankrupts on April 11, 1910?

A. That I couldn't say positively. I made the statement that I thought they were in financial trouble a little later, but I couldn't state the exact date.

Q. Do you wish to qualify your statement concerning the paper of Wiseman and Barclay?

A. If they were bankrupt on April 11th, yes.

Q. Their note wasn't good, then.

A. I wouldn't consider it such. I don't know the exact date they went into bankruptcy.

Q. Do you know all the circumstances surrounding these notes which have been listed to you by Mr. McGinn?

A. I know nothing of the circumstances.

Q. You know nothing except that the bank held this particular piece of paper?

A. That is all I know.

Q. You don't know whether any reason existed for its not [753] being collected?

A. No. I do not.

(Testimony of Volney Richmond.)

Q. So far as you know, none existed?

A. As far as I know. I know nothing concerning it one way or another.

Q. You knew Mr. Wood at that time in 1910?

A. I did.

Q. You know he was a good collector of paper, did you not? A. He had that reputation.

Q. A good collector of paper? A. Yes.

Q. And Mr. Jackson also had that reputation?

A. He was the same, had the same reputation.

Q. And Mr. Wesch of the Washington-Alaska Bank had that reputation? A. He did.

Q. And Mr. Parsons had that reputation?

A. Yes, sir.

Q. And so did Barnette? A. He did.

Q. And your opinion of the values of these notes is all based upon the fact that it had no other impairment than that it was merely past due.

A. Yes, sir.

Q. You knew Lew Wing, did you not?

A. I did.

Q. Your attention was called to a note of his of \$150. A. It was.

Q. Did you know that that item was in dispute?

A. I did not.

Q. He was working for the bank at that time?

A. He was.

Q. The bank to whom he owed this paper?

A. He was. [754]

Q. Did you know that he claimed Mr. Barnette ought to pay that paper at that time?

(Testimony of Volney Richmond.)

A. I did not.

Q. You didn't know that when you gave your valuation upon it. A. I did not.

Q. Now, in this matter of this Tanana Electric note, do you know of any agreement that the Fairbanks Banking Company had which bound the Scandinavian-American Bank to guarantee these advances? A. I do not.

Q. You know that the advances that were made to the Tanana Electric Company down to September, 1907, to which you referred, were all made really on the credit of the Tanana Electric Company, were they not? A. That is not my understanding.

Q. What was your understanding? [755]

A. My understanding was that Mr. Chilberg of the Scandinavian-American Bank agreed to put up this \$100,000.

Q. To whom?

A. To the Tanana Electric Company.

Q. Not to the Fairbanks Banking Company?

A. Not to the Fairbanks Banking Company.

Q. You never did understand that he had agreed to put up any \$100,000 to the Fairbanks Banking Company? A. No.

Q. That was a deal purely between Chilberg of the Scandinavian-American Bank and the Tanana Electric Company? A. Yes.

Q. And Mr. Chilberg was vice-president of the Scandinavian-American Bank? A. He was.

Q. But he was president of the Tanana Electric Company? A. He was.



(Testimony of Volney Richmond.)

Q. And the Tanana Electric Company executed a mortgage to the Scandinavian-American Bank for \$100,000? A. Yes.

Q. That was the only mortgage given? A. Yes.

Q. That was the only pledge of the Scandinavian-American Bank for advances?

A. That was the only one.

Q. That didn't relate to the Fairbanks Banking Company, did it? A. It did not.

Q. You testified as a witness in a suit that was brought entitled F. G. Noyes, receiver, vs. Scandinavian-American Bank, in which your deposition was taken here in Fairbanks. A. I think I did.

Q. Your deposition was taken? A. Yes. [756]

Q. Did you in your deposition in any way or manner state that the Scandinavian-American Bank was liable to the Fairbanks Banking Company for those advances?

Mr. McGINN.—Let him show him his deposition. He is interrogating him in regard to a written instrument.

Mr. RIDER.—Q. Do you wish to examine it and see whether you did or not?

A. I don't think I did, but I would like to examine it just the same. (Deposition handed to witness.)

A. That is just as I remember it. (Referring to deposition.)

Q. There is nothing in there about the Scandinavian-American Bank being responsible to the Fairbanks Banking Company for this paper, is there?

A. No, sir.

(Testimony of Volney Richmond.)

Q. I believe you stated to Mr. McGinn, as I understood it, that you regarded the claim against the Scandinavian-American Bank as a valid claim in favor of the Fairbanks Banking Company because of the previous advancements that had been made.

A. Yes, sir. Not because of previous advances. I figured that the Scandinavian-American Bank were duty bound to pay the balance of the \$100,000.

Q. To the Tanana Electric?

A. To the Tanana Electric.

Q. But he was asking you how you regarded the claim of the Fairbanks Banking Company against the Scandinavian-American Bank.

A. I simply figured that when they paid up the balance of the \$100,000 then the Fairbanks Banking Company would get their money.

Q. And this balance of the money would be put up to the Tanana Electric under that mortgage?

A. Yes. [757]

Q. And your thought was that when the Scandinavian-American Bank completed its contract with the Tanana Electric Company and put up the \$100,000, that the Tanana Electric would pay the Fairbanks Banking Company. A. I did.

Mr. RIDER.—That is all.

**[Testimony of F. W. Carter, for Defendants.]**

F. W. CARTER, a witness for defendants, after being duly sworn, testified as follows, to wit:

Direct Examination.

(Mr. McGINN.)

Q. What is your name? A. F. W. Carter.

(Testimony of F. W. Carter.)

Q. Where do you reside?

A. At the present time at Fairbanks.

Q. How long have you resided in Alaska? [758]

A. Fourteen years.

Q. And have you resided at Nome?

A. At Nome.

Q. And have you at the Iditarod? A. Yes.

Q. Where were you living in 1905, and up to about the year 1910?

A. Well, I lived from 1904 until the fall of 1909 in Fairbanks.

Q. What business were you engaged in during that time?

A. From 1905 until the fall of 1909 I was engaged in the bottling and soda water business.

Q. I will ask you to state whether or not you were acquainted with the value of the stock of the company that was known—the soda works that you were connected with was known as the Tanana Bottling Works? A. Yes, sir.

Q. You were in charge of the business at that time?

A. I was treasurer for the corporation in 1906 and from 1906 up to the fall of 1909.

Q. I will ask you to state whether or not you were acquainted with the value of their stock say in 1910, in April? A. I was.

Q. I will ask you to state whether or not, in your opinion, you would regard 45 shares of the Tanana Bottling Works stock as worth \$5,000 in April, 1910?

(Testimony of F. W. Carter.)

(Plaintiff objects as irrelevant and immaterial. Overruled.)

A. Well, I wouldn't take that price for my stock at that time. I had stock in the bottling works myself at that time.

Q. You regarded it at that time of that value?

A. Yes, sir.

Mr. McGINN.—That is all.

Mr. RIDER.—Stand aside. [759]

Mr. McGINN.—At this time we desire to introduce in evidence the minutes of the directors' meeting of the Fairbanks Banking Company from the time of its organization up to the 12th day of April, 1910, for the purpose of showing the care that was exercised by them in loaning money of the Fairbanks Banking Company, including the minutes of the executive committee.

Mr. RIDER.—That is objected to as irrelevant and immaterial. It might have some bearing in the case as to the notes in controversy, but, as to the notes not in controversy, it is irrelevant and immaterial.

The COURT.—It seems to me that is too general an offer.

Mr. McGINN.—I desire my offer to show that the minutes show that when loans were made, and the matter first came up to the executive committee, that it was considered by them, and afterwards put to the board of directors. I want to show that the directors rejected more loans than they gave; that the matter was always thoroughly discussed by them. And the minutes show that they exercised the great-

(Testimony of F. W. Carter.)

est degree of care in making loans, and in that way became acquainted with all the loans of the institution.

Mr. RIDER.—I think that it is irrelevant and immaterial for there is no charge against the directors for making loans in a negligent manner; they are not charged with negligence in making loans.

The COURT.—I think the offer itself is too general. If you have anything in particular you want to offer having any bearing on the issues, offer it.

Mr. McGINN.—I will illustrate what I want to show (Reads from minutes.)

The COURT.—I think the offer should be limited to matters [760] in controversy in this case. The form of the offer as made is too general.

**[Testimony of E. R. Peoples, for Defendants.]**

E. R. PEOPLES, a defendant, sworn as witness for defendants, testified as follows, to wit:

Direct Examination.

(By Mr. HEILIG.)

Q. Give your name.      A. E. R. Peoples.

Q. What is your business?      A. Merchant.

Q. Where do you reside at this time?

A. Fairbanks.

Q. How long have you resided in Fairbanks?

A. Continuously since 1905.

Q. Where were you engaged in the mercantile business prior to coming to Fairbanks?

A. At Skaguay, Alaska.

Q. Any other place?



(Testimony of E. R. Peoples.)

A. Prior to coming to Skaguay, in the State of Washington.

Q. At any place in the Yukon Territory?

A. No.

Q. On the Yukon River?      A. At Eagle.

Q. For how long?      A. About two years.

Q. What has been your business since you have been engaged in business?

A. General store business.

Q. Were you ever at any time a banker?

A. No, sir.

Q. Or connected with banking institutions?

A. For a short time I was a director of the Fairbanks Banking Company.

Q. How did you come to be elected as a director of the [761] Fairbanks Banking Company.

A. Along in the fall of 1908 Mr. Dusenbury asked me would I accept the office of director. I told him I would rather not, being somewhat busy with my own business. Well, he said at that time of the year there was not so much doing and he would like to have me come down. I told him if he could get anybody else, I would rather he would do so, but if he couldn't find anybody I would help him out if possible.

Q. At that time how much stock did you have in the Fairbanks Banking Company?

A. A thousand dollars' worth. Ten shares, I believe.

Q. How did you come to be a stockholder in that bank?

(Testimony of E. R. Peoples.)

Mr. RIDER.—I object as irrelevant and immaterial.

Mr. HEILIG.—I want to show he is one of the original subscribers to the stock.

The COURT.—That appears here.

Mr. HEILIG.—I think so too.

Q. How much did you pay for your stock?

A. I paid \$1000.

Q. And it is in evidence now that you sold your stock to Mr. Dusenbury? A. Yes, sir.

Q. How did you come to sell your stock?

A. Mr. Dusenbury owned a lot alongside my building, that I was desirous of getting, and I made a proposition to him, and we were unable to agree as to the price. Well, I took the matter up with Mr. Wood.

Q. That is Mr. Wood, the president of the First National Bank?

A. Yes, sir. Mr. Wood at that time was in the real estate business. And he finally made the deal with Mr. Dusenbury; and in the payment of the purchase price for the property [762] we paid him part cash by a check, and the balance stock.

Q. How much did you pay him in cash?

A. \$1500.

Q. And what was it agreed that the value of the stock was at that time? A. \$1000.

Q. Do you remember when this was? Can you refresh your memory from the date of your check?

A. Yes, sir. The payment was made April 24, 1909.

(Testimony of E. R. Peoples.)

Q. And at the same time you transferred your stock?     A. Yes.

Q. And you resigned as a director at that time?

A. Yes, sir.

Q. You had no other stock in the institution?

A. No, sir.

Q. And after that you paid no attention to the corporation?     A. No, sir.

Q. And attended none of their meetings?

A. No.

Q. Did you attend any of the meetings of the executive committee of that bank while you were a director?     A. No, sir.

Q. You never were a member of the executive committee?     A. No, sir.

Q. The only meetings that you attended, as appears from the minutes, were the meetings of the board of directors upon five occasions?

A. Yes, sir.

Q. There were apparently two meetings that you didn't attend. It appears that at the first meeting of the directors that you attended, a report was made that application had been made by Mark L. Sullivan to surrender stock to the [763] bank; that the executive committee had refused to accept the surrender. Do you remember anything in regard to the facts? Do you recollect anything in regard to that matter coming up before the board of directors?

A. Not as to the date. I remember that they refused to accept the stock, or to buy any stock.

Q. Laid that down as the policy of the board at

(Testimony of E. R. Peoples.)

that time?     A. Yes, sir.

Mr. HEILIG.—Q. Do you know anything in regard to the circumstances surrounding the surrender of a few other shares of the bank during the time you were a director? Was it called to your attention?

A. I think not. There may have been one item.

Q. Were you aware that any of the employees of the bank had accepted the surrender of any other shares of stock than the Strandburg and Johnson stock, and the one item that you refer to?

A. No, sir.

Q. Was it in any way called to your attention that, for instance, the stock of John Clifford was apparently surrendered to the bank February 9, 1909, and \$200 placed to his credit? Were you ever aware of that transaction?     A. No, sir.

Q. Until it was recently called to your attention?

A. No, sir.

Q. No report of such transactions were made to the board of directors?     A. No, sir.

Q. Do you remember anything surrounding the surrender on February 19, 1909, of George Jestel's stock of \$500?

A. My memory is not clear on that, but I believe it was that stock. Jestel was in bad circumstances, or had been sick, [764] and was inquiring for a loan, and it was referred to the committee, and I think that is the stock.

Q. Referred by whom?     A. By the directors.

Q. It was brought up before the board of directors?     A. And referred to the committee.

(Testimony of E. R. Peoples.)

Q. Did you learn afterward what was done in regard to it; I mean, while you were a director did you learn?     A. I think not.

Q. It was not again brought to your attention in any manner?     A. No, sir.

Mr. HEILIG.—That is all.

Cross-examination.

(By Mr. RIDER.)

Q. Mr. Peoples. You attended the meeting of October 14, 1908, to which your attention was called, when the matter of the Sullivan stock was brought up?     A. Yes, sir.

Q. The record of that meeting, as shown by the minutes of that transaction, is as follows (Reads):

“The matter of the disposition of the request of M. L. Sullivan regarding the bank taking up his stock and interest in the bank was brought up, for consideration. After full discussion, it was decided on motion of Robinson seconded by Ryan that no action be taken.”

That is the record of the transaction in the Sullivan [765] matter, is it not?

A. If my memory serves me right, it was the intention of the bank at that time not to accept any stock.

Q. And such declared to be the policy of the bank?

A. That was declared to be the policy.

Q. Had you known the previous policy of the bank in that matter?     A. I had not.

Q. You didn't adhere to that policy very closely during the time you were a director?     A. Yes, sir.



(Testimony of E. R. Peoples.)

Q. You were a director on February 13, 1909?

A. Yes, sir.

Q. And at that time the matter of the Jestel stock came up?     A. I don't remember just the date.

Q. You were present when the matter of the Jestel stock was taken up?     A. I think so, yes, sir.

Q. And the record shows that on February 13, 1909, following the declaration of the policy you have spoken of as to the Sullivan stock, this action was taken. (Reads.) And the record shows you were present at that meeting:

“The matter of the disposition of the Jestel stock was brought up for consideration, and it was the sense of the meeting that its disposition be left to the officers of the bank.”

You had changed your policy at that time?

A. Well, there may have been some circumstances surrounding it.

Q. But you didn't adhere to that policy which you say was declared respecting the Sullivan stock?  
[766]

A. That was the general policy.

Q. You didn't adhere to it respecting the Strandberg Brothers stock, did you?     A. Yes, sir.

Q. You took up the Strandberg Brothers' stock?

A. Well, we considered it the best policy to do it for the bank in the settlement of the loan.

Q. You stated it was the declared policy of the bank that you would take up no stock?     A. Yes.

Q. Then you abandoned the policy as to Strandberg's stock and the Jestel stock specifically, did you not?

(Testimony of E. R. Peoples.)

A. Well, I can't say that we abandoned it. No.

Q. You did take up those two items of stock?

A. Yes, but we were forced to do it under the conditions that surrounded those two accounts probably.

Q. Now, at the time of the sale of your stock to Mr. Dusenbury, you say that stock went in in part payment for a piece of property that you bought from Mr. Dusenbury? A. Yes, sir.

Q. And there was considerable negotiating back and forth between you and Mr. Dusenbury as to the amount which would be paid for that property?

A. I wouldn't say there was considerable. Mr. Dusenbury asked me \$3,500.00 for the property, and I considered that was pretty high, and I made him an offer.

Q. What offer did you make him?

A. I made him an offer of \$2,000, and he wouldn't accept that. [767] So I took the matter up, then, with Mr. Wood, and told him I would give \$2,500.00.

Q. Was that offer a cash offer of \$2,000?

A. The terms of it were not stated at that time.

Q. Was it contemplated as a cash offer of \$2,000 at that time? A. I presume it was at that time.

Q. And he wanted \$3,500 cash? A. Yes, sir.

Q. When did the matter of putting the stock in on this deal come into it?

A. When he agreed to accept the \$2,500. Then I made the proposition to him that I would give him \$1,000 Fairbanks Banking Company stock, and \$1,500 cash.

(Testimony of E. R. Peoples.)

Q. You were taking his property at \$2,500, and paying him \$1,500 in cash, and \$1,000 in stock?

A. Yes, sir.

Q. That is the way you finally consummated your deal? A. Yes, sir.

Mr. RIDER.—That is all.

Redirect Examination.

(By Mr. HEILIG.)

Q. Mr. Peoples, were you acquainted with Frank Wiseman and Robert Barclay in April, 1910; Wiseman the present Chief of Police, and Barclay?

A. Yes, sir.

Q. They were operating at that time on Treasure Creek? A. I think so.

Q. Did you have any business in your mercantile establishment at that time with them? A. No, sir.

Q. Or prior thereto? [768]

A. I have done business off and on with Mr. Wiseman for a great number of years.

Q. I would ask you whether you would consider a note for \$1,543.57 good on April 12, 1910, when secured by a mortgage on a 35 horse-power mining plant then on Treasure Creek?

A. Was that a complete plant?

Q. A complete plant, yes, sir.

A. Yes, sir.

Mr. HEILIG.—Now, I am not able to state at this time whether these minutes were all read in evidence. I mean those with reference to the surrender of stock. I want to read in an extract from the minutes of the meeting of the executive committee of

(Testimony of E. R. Peoples.)

September 14, 1908, which was approved at the meeting of the board of directors held October 14, 1908, which was the first meeting that Mr. Peoples attended as a director, to this effect (Reads):

“Minutes of special meeting of the executive committee Fairbanks Banking Company, held September 14, 1908.”

Which minutes were read to the board of directors at a meeting on October 14, 1908, and approved. I want to read this extract (Reads):

“The matter of the bank taking over Mr. Hans Stark’s stock in the company was brought up for discussion, and it was the sense of the meeting that it was not policy at this time to continue taking over stockholders’ interest.”

These minutes were all read at the following meeting of the board of directors held October 14, 1908, being the first meeting that Mr. Peoples attended. We have already referred to the fact that the minutes of the board of directors of October 14, 1908, show that they also refused to take [769] action upon the application of Mark Sullivan to take over his stock.

Now, I desire to read from the minutes of the executive committee of November 5, 1908, which were read and approved at a meeting of the board of directors on November 12, 1908, with reference to the making of the Strandberg loan. This is under a meeting of the executive committee on November 5, 1908 (Reads):

“The matter of a loan to Strandberg of \$15,000

(Testimony of E. R. Peoples.)

due June 1, 1909, was discussed. It was moved by Jonas, seconded by L. N. Jesson, that a loan of \$15,000 to Strandberg Brothers be made on the security of their 110 shares of Fairbanks Banking Company stock and notes aggregating \$2,500. Carried."

Mr. RIDER.—That was approved on what date?

Mr. HEILIG.—On December 12, 1908.

I want to read from the minutes of the executive committee on February 3, 1909 (Reads):

"A communication from John E. Thrash of Seattle, Washington, advising that he held a block of 25 shares of Fairbanks Banking Company stock for a client of his and was desirous of disposing of the same, and asking for information as to the value of the stock and if the bank desired to purchase same. It was the sense of the meeting that an answer be directed to him that the bank did not desire to buy any stock at the present time, and that they furnish the last published statement of the bank."

I desire to read from the minutes of the executive committee of March 15, 1909, which were read and approved by the board of directors on April 12, 1909 (Reads):

"The following requests from stockholders as to the [770] bank purchasing their stock was considered; H. B. Parkin 10 shares, O. E. Tackstrom 5 shares. It was the sense of the meeting that the bank observe the rule established at a previous meeting of the board wherein it was decided not to buy in any more of the bank's stock."

Mr. HEILIG.—That is all.



(Testimony of E. R. Peoples.)

Further Cross-examination.

(By Mr. RIDER.)

Q. Mr. Peoples, your attention has been called by Mr. Heilig to the minutes of the meeting of the executive committee held on September 14, 1908, approved by the board of directors upon October 14, 1908, wherein action was taken with reference to Hans Stark's stock. You remember that?

A. Yes, sir.

Q. The record shows that at that same meeting of the board of directors, October 14, 1908, which you attended, that the minutes of the board meetings—that is, the board of directors—of September 12th at 3:30 P. M., and September 12th at 9 P. M., were read and approved as read, and I wish to read in evidence the action of the board had on September 12th, respecting the Hans Stark stock (Reads):

“Mr. Hans Stark requested that the board take over his stock as he intended leaving the country for good. On motion of Jonas, seconded by Robinson, it was the sense of the meeting that the bank take back the stock of Mr. Hans Stark and pay him therefor par value. Motion carried.”

A. What date was that?

Q. That was approved by the board October 14, 1908, and you were present at the meeting of October 14, 1908. The action of the board was taken on September 12, 1908, and the record shows that the minutes of September 12, 1908, were read and [771] approved by the board on October 14, 1908.

Mr. HEILIG.—That was on September 12th.

(Testimony of E. R. Peoples.)

What I read was the action of the executive committee on September 14, in which they refused to take it.

Mr. RIDER.—Certainly. The executive committee passed the action you read, and it was approved on September 12th, and on September 12th the board took the action which I read, and it was also approved on October 14th by the board.

Mr. HEILIG.—You mean the executive committee?

Mr. RIDER.—No, the board.

Mr. HEILIG.—You say the board of directors met on September 12th?

Mr. RIDER.—On September 12, 1908.

Mr. HEILIG.—That was prior to Mr. Peoples—

Mr. RIDER.—But the minutes were approved on October 14, when Mr. Peoples was present.

The COURT.—Those matters are in evidence. The Court understands it.

Mr. RIDER.—Q. With reference to that Wiseman and Barclay loan. You know that Wiseman and Barclay were adjudged bankrupts in April, 1910?

A. I didn't know that.

Q. You spoke about some mortgage on some machinery that secured their loan, did you not?

A. It was mentioned as a complete mining plant, a 35 horse-power mining plant.

Q. I understood you to say there was a 35 horse-power boiler that secured that loan.

A. Mr. Heilig's question was, would that security

(Testimony of E. R. Peoples.)

be good for \$1,500 on a complete 35 horse-power mining plant.

Q. Do you know whether the bank had such security?

A. That was not the question asked. [772]

Q. You are just assuming that a mortgage so secured would be good.

A. He asked if a mortgage in a 35 horse-power mining plant would be good for \$1,500, and I answered that it would.

Q. That is the way you understood it? A. Yes.

Mr. RIDER.—That is all.

[**Testimony of C. Harry Woodward, for Defendants.**]

C. HARRY WOODWARD, a witness for defendants, after being duly sworn, testified as follows:

Direct Examination.

(By Mr. McGINN.)

Q. What is your name?

A. C. Harry Woodward.

Q. Where do you reside? A. Fairbanks.

Q. How long have you resided in Fairbanks?

A. Since 1904.

Q. What has been your business during that time?

A. Real estate and broker business.

Q. As such, you have become acquainted with the values of real property in the town of Fairbanks, Alaska? A. Yes, sir.

Q. I will ask you whether or not you are acquainted with the property situated in the town of Fairbanks, Alaska, known as lot 3 in block 5 east, corner of 4th and Hall Street, being the property

(Testimony of C. Harry Woodward.)

that was owned by Ed. Cathcart?

A. I know the location all right.

Q. Did you know that property in April, 1910?

A. Yes, sir.

Q. Acquainted with the value of that property at that time?      A. Yes, approximately. [773]

Q. I will ask you to state whether or not in your opinion that lot that I have described was good for the sum of \$227?

A. Well, I consider the lot worth probably \$200 or \$250. It was a whole lot.

Q. Are you acquainted with T. L. Thurston?

A. Yes, sir.

Q. Do you know the lot and the residence that he bought from Mrs. Schmidt?      A. Yes, sir.

Q. Situate over here on 3d Avenue?

A. Yes, sir.

Q. Were you acquainted with that property in the month of April, 1910?      A. Yes, sir.

Q. I will ask you whether or not in your opinion that property was worth sufficient to satisfy a claim of \$950, or whether it was worth that amount, or more than \$950, in April, 1910?

A. Yes, sir, it was worth more.

Mr. McGINN.—Cross-examine.

Cross-examination.

(By Mr. RIDER.)

Q. Mr. Woodward, referring to the Cathcart property in April, 1910. I didn't understand the amount you stated you considered the whole lot worth?

A. I consider a lot 50 by 150 in that location worth from \$200 to \$250.

(Testimony of C. Harry Woodward.)

Q. Do you know whether there was a whole lot in this Cathcart property?     A. I do not.

Q. What would you consider that 25 foot lot worth in April, 1910?     A. 25 by 150? [774]

Q. Yes.

A. Well, I don't think it would be worth over \$150.

Q. Do you know the condition of the Cathcart cabin in April, 1910?

A. I understand it was burned down.

Q. There was nothing there but the lot, or part of a lot.

A. That is what I understood, but I don't know when that occurred.

Q. And part of the lot, 25 feet—

A. I don't think would be worth more than \$150.

Mr. RIDER.—That is all.

**[Testimony of Luther C. Hess, for Defendants.]**

LUTHER C. HESS, a witness for defendants, after being duly sworn, testified as follows, to wit:

Direct Examination.

(By Mr. McGINN.)

Q. What is your name?     A. Luther C. Hess.

Q. How long have you resided in Fairbanks?

A. Since 1903.

Q. Since residing in Fairbanks, what have you done?

A. Well, I was assistant United States Attorney for a *whole*, and I have been mining and banking.

Q. What bank are you connected with?

A. The First National Bank.

Q. What position did you occupy in that bank?



(Testimony of Luther C. Hess.)

A. Cashier.

Q. In what years?      A. 1905.

Q. When did you sever your connection with the First National Bank?

A. I think in the fall of 1905, or winter of 1905.

[775]

Q. Since that time you have been engaged principally in mining.      A. Principally in mining.

Q. Are you acquainted with William James?

A. Yes, sir.

Q. Are you acquainted with the property located on Fairbanks Creek in this recording district?

A. Yes, sir.

Q. Are you acquainted with the James Fraction between 8 and 7 below, on Fairbanks Creek; 8 bench, first tier, left limit Fairbanks Creek; and 4 first tier, left limit of Fairbanks Creek?

A. 4 above or below?

Q. 4 below.

A. Yes, I know those locations.

Q. Are you acquainted with those properties and the value of them in April, 1910?

A. I could give the approximate value.

Q. I will ask you to state whether or not in your opinion those properties were ample security for the sum of \$508.42.

Q. What would you regard to value of that property at this time?

A. I would regard to value at the present time more than that and there has been a good deal of gold taken out of the fraction at least.

(Testimony of Luther C. Hess.)

Q. Did you know D. W. Truitt?      A. Yes, sir.

Q. Were you acquainted with the property known as Number 8 above, Dome Creek, that was owned by him?

A. Well, I don't remember who owned it, but I am acquainted with Number 8 above.

Q. Were you acquainted with the value of that property in [776] April, 1910.

A. That is the creek claim?

Q. Yes.      A. Yes.

Q. What did you regard the value of that property in April, 1910?

A. I should think that property at that time would be worth at least \$1,000.

Q. You would regard it ample security for \$1,000?

A. Well, it would be, I think, worth \$1,000 at that time.

Q. Would you regard a three-quarters interest in 8 above on Dome Creek, with a 25 horse-power mining plant located on the claim as sufficient security for the sum of \$1,000?      A. Yes, sir.

Q. Did you know Bob Sheppard?      A. Yes, sir.

Q. Were you acquainted with his financial standing in this community in April, 1910?

A. I knew his reputation as far as his financial standing goes, if that is what you mean.

Q. Did you know what property he owned in the Fairbanks Recording District?

A. Yes, I know some of the property.

Q. What property did he own?

A. He owned property on Goldstream at that time,

(Testimony of Luther C. Hess.)

and I think he owned some on Fairbanks Creek.

Q. I will ask you to state whether or not you would consider his note for the sum of \$1,700 as being good?

A. Yes, sir.

Q. You would consider that good to-day, wouldn't you? A. I should think it ought to be good.

Q. Did you know Max Altman?

A. Slightly. [777]

Q. Are you acquainted with the claim known as Number 7 below on Cleary Creek?

A. That is the creek claim?

Q. Yes. A. I am.

Q. I will ask you to state whether in your opinion a mortgage on an undivided one-half interest in the lower one-half of 7 below on Cleary Creek was good in April, 1910, for the sum of \$790? A. Yes, sir.

Q. You are acquainted with that property?

A. I am acquainted with that property down there.

Q. Are you acquainted with Harry Johnson?

A. Yes, sir.

Q. Did you know his financial standing in this community in April, 1910?

A. I think Johnson was out on Goldstream at that time. Yes, I think so.

Q. I will ask you to state whether or not you regard his note in the sum of \$1,200.00 as good in April, 1910?

A. Yes, sir. It was good at that time.

Q. Did you know R. M. McMullen?

A. I am not certain whether I did or not.

Q. Are you acquainted with the property known

(Testimony of Luther C. Hess.)

as 4 above Discovery, first tier, right limit, of Dome Creek?     A. Yes, sir.

Q. I would ask you whether or not you would regard an undivided one-quarter interest in that property, in April, 1910, as good for the sum of \$1,000.

A. That 4 is the property that has been operated by Fraker & Nelson out there. They have been operating on that ground up to the present year. They operated there some, I [778] think, last year, and that has always been considered very good property. Yes, it would have been worth that.

Q. You would regard that as good for the sum of \$1,000?

A. Yes, sir. I know that same years before that, that \$25,000 was reported to have been offered for a quarter interest in that claim. I didn't know that McMullen owned a quarter interest in that.

Q. Are you acquainted with Ray Brumbaugh?

A. Yes, sir.

Q. This one-quarter interest of McMullen's that we have been talking about is in 4 above Dome Creek.

A. Oh, I was thinking of Little Eldorado. That is a different piece of property. 4 above on Dome Creek was originally located by Bridges, and operated by Hamilton and Nolan for a number of years, and up to last year operated by William Canning. In 1910 it was certainly worth the sum of money mentioned.

Q. That is, a quarter interest would be worth more than that.     A. Yes, sir, I think so.

Q. Are you acquainted with Ray Brumbaugh?

(Testimony of Luther C. Hess.)

A. Yes, sir.

Q. Were you acquainted with his financial standing in this community in the month of April, 1910?

A. I was acquainted with his business standing.

Q. I would ask you whether you would regard his note for the sum of \$7,752.62 as good at that time?

A. Yes, sir.

Q. You knew what business he was engaged in here?     A. Yes, sir.

Q. What business?

A. He was in the hardware business; he and Mr. Hamilton and [779] Mr. Kellogg.

Q. Was it a business of some size?

A. One of the principal businesses of that character in this community, and also in the Iditarod, I think, at that time.

Q. They handled mining machinery?

A. Yes, sir.

Q. Have you any idea of the volume of stuff they handled during those years?

A. I should think they were handling from one to two hundred and fifty thousand dollars worth, knowing the business they were doing.

Q. Do you know Harry Cribb?     A. I do.

Q. Did you know him in April, 1910?

A. Yes, sir.

Q. Do you know what property he owned in the town of Fairbanks, Alaska?     A. Yes, sir.

Q. I would ask you whether you would consider the note of Harry Cribb for \$1,001.60 in April, 1910, as good?     A. Yes, sir.



(Testimony of Luther C. Hess.)

Q. And particularly if it was secured by a mortgage on buildings and lots on the corner of 4th and Cushman Street known as the Gordon Glass Block, and the residence now known as the Herpick residence. A. Yes, sir.

Q. You would consider the security good?

A. It certainly would be good to-day.

Q. Would you consider Cribb himself good for it without security?

A. I think it was in 1910 that I took his note on a little deal for \$500 without any security, and he paid it.

Q. I would ask you whether or not you would regard the note of W. Sam Clark, Lou B. Clark, F. J. Mace, and J. A. Clark. [780] as good for the sum of \$800 in the month of April, 1910? A. Yes, sir.

Q. I will ask you to state whether or not you would regard the note of W. Sam Clark, Richard H. Stafford and John A. Clark as good for the sum of \$250.00 in the month of April, 1910? A. Yes, sir.

Q. You were acquainted with the financial standing of Frank Mace, were you? A. Yes, sir.

Q. Were you acquainted with the financial standing of John A. Clark?

A. Yes, sir, reputed. I don't know just what a man's business is.

Q. But, financially, they stood well in the community.

A. Yes. I probably knew more about Mace's standing than any of the rest.

Q. Are you acquainted with A. R. Heilig?

(Testimony of Luther C. Hess.)

A. Yes, sir.

Q. State whether or not you regard his note—A. R. Heilig and Leroy Tozier's note in the sum of \$500 as good in April, 1910? A. Yes, sir.

Q. Do you know John Moe and Schroeder? Schroeder used to be in the saloon business down here.

A. I don't recollect Schroeder. I suppose I knew him.

Q. You know John Moe? A. Yes.

Q. You have known him for some time?

A. Yes, sir.

Q. I will ask you to state whether or not you regarded the note of John Moe for the sum of \$180.00 as good in the month of April, 1910? A. Yes, sir.

Q. It is good to-day, isn't it?

A. I should think so. [781]

Q. Are you acquainted with R. R. Myers, the dentist? A. Yes, sir.

Q. Are you acquainted with the financial standing in this community of Doctor Myers in the month of April, 1910? A. Yes, sir.

Q. You know him, do you not?

A. I know Doctor Myers.

Q. You know him quite well? A. Yes, sir.

Q. I will ask you to state whether or not in your opinion his note in the sum of \$1000 would be considered good in the month of April, 1910?

A. The doctor had met with some reverses in mining, and he probably owed a good deal more than \$1000, but if I had owned that note I wouldn't have

(Testimony of Luther C. Hess.)

been at all afraid but what it would have been paid.

Q. You would like to have his note for that amount now?

Mr. RIDER.—We object as irrelevant, incompetent and immaterial.

Mr. McGINN.—Are you acquainted with Jack Baird?

A. Yes.

Q. Would you regard his note good for the sum of \$2,000 in the month of April, 1910?

A. I think Mr. Baird at that time was in the Iditarod, or went down there soon after. I don't know just when, and he was connected in some way with Mr. Griffin down there, and has later been conducting a business of his own, and that note ought to be worth its face value now. It ought to be worth more than that.

Q. Are you acquainted with S. D. McIlroy? He was commonly known as "Tex" McIlroy here.

A. Yes, sir.

Q. You were acquainted with him in April, 1910?

A. Yes, sir. [782]

Q. State whether or not in your opinion his note for the sum of \$100 was good in April, 1910.

A. Well, I don't whether I could say exactly that in April, 1910 it was good, but I know that since that time McIlroy has had property here that was valued at a good deal more than \$100. If he owned the property down on Wendel avenue, which was reputed to be his, it was worth a good more than that. About

(Testimony of Luther C. Hess.)

that time, or a little later, he was interested on Chatham Creek in quartz property.

Q. He sold out there for quite a large sum of money?

A. No big sum of money, but he got several times that much money out of it. And he had that for some time.

Q. He always paid his debts?

A. He was always regarded as good for a small amount.

Q. He was a man that would pay his bills?

A. So far as I know, yes.

Q. Are you acquainted with the property known as the Royal Hotel, situated on First Avenue?

A. Yes, sir.

Q. The Sorenson brothers owned it.

A. Yes, sir.

Q. I will ask you to state whether or not in your opinion that property was worth the sum of \$4,000 in the month of April, 1910?

A. I don't know just how much of a lot that includes. Does it include more than the building?

Q. I understand the lot runs back to Second Avenue. Does it not, Mr. Stewart?

Mr. SIDNEY STEWART.—I don't think it does go clear through.

WITNESS.—I think it includes some little buildings on the side. It ought to have been worth that at that time, but it probably wouldn't be worth that at this time.

Mr. McGINN.—Q. Did you know John Hedman?

(Testimony of Luther C. Hess.)

A. Yes. [783]

Q. I will ask you whether or not you would regard his note in April, 1910, for the sum of \$250 as being good? A. Secured or unsecured?

Q. Secured by a mortgage on 280 cords of wood and two horses on Ester Creek?

A. It ought to be good.

Q. You advanced him money?

A. I loaned him some money in the latter part of 1909, and collected it. I think I made the loan on the 29th day of March, 1910. He always had the reputation of paying his bills, and I had no particular trouble in collecting what I had loaned him.

Q. Here is a mortgage dated the 30th day of November, 1908, by and between F. C. Wiseman and L. Barclay, both of Fairbanks, Alaska, and the Washington-Alaska Bank, to secure the sum of \$1,680, witnesseth: That said parties of the first part, for and in consideration of the sum of \$1,680 lawful money of the United States to them in hand paid by the party of the second part, the receipt whereof is hereby acknowledged, do by these presents grant, bargain, sell and convey and mortgage unto said parties of the second part, its successors, assigns and representatives forever, all—

Mr. RIDER.—Do you intend to read that lay?

Mr. MCGINN.—I want to show that they mortgaged their leasehold estate in that portion of the Tonasek Association claim, situate on Treasure Creek, tributary of Vault Creek, in the Fairbanks Recording District, Territory of Alaska, the lower 865 feet



(Testimony of Luther C. Hess.)

of that part of the divided Tonasek Association claim which is owned by the above-named lessors, and which part at the downstream end adjoins Conta & Mack's and Quinn's upper lines. Whereas the parties of the first part in this mortgage have a 75 per cent lay, and the [7831½] parties of the first part herein hereby mortgage to the parties of the second part all their right, title and interest in and to said leased premises, and also the 35 horse-power Pennsylvania boiler, one Little Giant hoist, one self-dumper, and all boxes, and cables, and all other personal property situate upon said above described leased premises. And this mortgage was recorded and is now on file in the office of the recorder of the Fairbanks Recording District.

Mr. RIDER.—What was that mortgage given for?

Mr. McGINN.—For \$1600.

Q. Would you consider the plant described in there as worth the sum of \$1543.57?

A. A complete mining plant. Yes, sir.

Q. Such as is described in the mortgage?

A. Yes.

Mr. McGINN.—That is all.

(By Mr. HEILIG.)

Q. Mr. Hess, in view of what you have testified about your long residence here, and the business in which you have been engaged, I will ask you to state whether or not you know the common practice of the banks with reference to loaning money to miners in this vicinity to develop their claims.

A. Yes, sir, I think so.

(Testimony of Luther C. Hess.)

Q. Will you state for the purpose of the record, and the information of the Court, just what the ordinary transaction was when a miner took a lease upon a piece of undeveloped [784] property,—mining property,—and found what apparently was the paystreak.

Mr. RIDER.—Objected to as irrelevant and immaterial.

(Argument. Objection overruled.)

Mr. HEILIG.—Q. What was the almost universal practice of a miner under those circumstances?

A. If a miner had taken a lease on property that he supposed had value, or he had already sunk a shaft and shown value, and was unable to finance the proposition himself, he usually obtained some credit from the merchants—a considerable credit usually—then, in order to pay necessary bills, he usually borrowed from the banks, sometimes giving a mortgage on his machinery and sometimes not.

Q. And a mortgage on his leasehold?

A. Sometimes a mortgage on his leasehold.

Q. The bank having made such a loan, what was the practice of the bank when the loan fell due?

A. If the man was able to go on, or if there was any chance of him going on, the bank would be very careful not to put him out of commission, because it would stop the development of the country and stop the operations.

Q. In your experience have you observed many cases where loans of that kind have been made resulting in great profit to the borrower and to the bank?

(Testimony of Luther C. Hess.)

Mr. RIDER.—We object as irrelevant and immaterial.

The COURT.—He may answer, subject to the objection.

A. I know that that has been almost the universal practice with the banks, and most of those have been paid.

Q. From your experience, would you say that it was an exercise of good judgment on the part of the bank not to force the collection of the loan at the time it fell due, under those circumstances? [785]

A. Well, of course you would have to judge every instance by itself. But, as a rule, I should say that was true.

Q. What is the fact, from your experience and observation, as to whether that practice, that course of dealing by the banks, has resulted largely in the development of this country? A. It certainly has.

Q. What would you say in regard to the ability of the majority of the miners who have opened and developed and operated ground, to finance their operations in the first instance?

A. As a rule they have not been able to finance their operations. That has been the exception rather than the rule.

Q. Financing the operations of a miner, whether he was a layman or owner, results generally, or did it generally result in that miner bringing to the bank the gold-dust which he produced?

A. That was one of the considerations that entered into the reason for the bank advancing to the opera-

(Testimony of Luther C. Hess.)

tor, because one of the principal profits of the banks in this portion of the country is derived from the purchase and sale of gold-dust, and all of the banks have been striving as much as possible to get the greatest share of the gold-dust.

Q. That was the principal cause of this fierce competition that has been testified about.      A. Yes, sir.

Mr. HEILIG.—That is all.

Cross-examination.

(By Mr. RIDER).—Q. Mr. Hess. What is your business at this time?

A. I am engaged in mining, that is, I am the owner of mining property, and look after my interests in the property.

Q. Have you any banking interests at this time?  
[786]

A. Well, I have some stock in the First National Bank.

Q. And Mr. Wood, one of the defendants, is also an associate of yours in that bank?      A. Yes, sir.

Q. And Mr. McGinn, another defendant?

A. Yes, sir.

Q. In giving your opinion as to the worth of the securities and also as to the worth of the notes, to which Mr. McGinn called your attention, that opinion was based upon the assumption that the bank had a legal demand against the borrower in the amount named by him?      A. Why, certainly.

Q. Do you know that, as to the note of W. Sam Clark, Lew B. Clark and J. A. Clark, the three notes

(Testimony of Luther C. Hess.)

to which your attention was called, there was usury in them?

A. I do not. I know nothing with reference to them.

Q. Those notes should be depreciated in your estimation to the amount of the usury which was contained in them? A. As a rule, I should say not.

Q. You are passing your opinion now that usury is a legal demand?

A. No, not necessarily a legal demand.

Q. You know as a matter of fact those notes were depreciated when they were finally collected because of the fact that they contained usury, do you not?

A. No.

Q. And the same as to the note of Mr. Heilig. Do you know that? A. No.

Mr. McGINN.—That is assuming something not in evidence.

The COURT.—The questions have been answered. He may be cross-examined as to what he based his opinion on. [787]

Mr. RIDER.—Q. You stated that the security which Mr. McGinn read to you for the D. W. Truitt loan, being a three-quarters interest in a mining claim on Dome Creek, in your opinion and judgment was worth, in April, 1910, \$1,000?

A. Yes, sir.

Q. That is what the three-quarters' interest was worth, in your judgment?

A. Yes. It would be worth that.

Q. Would you consider, then, that it was security for \$1,000?



(Testimony of Luther C. Hess.)

A. Well, it would always be better, of course, to have some margin in a security.

Q. Do you consider that a bank is safe in loaning \$1,000 on a thousand dollars' worth of property?

A. It may be safe in loaning it.

Q. Save from the security standpoint?

A. No, I wouldn't say it would be perfectly safe.

Q. You would not consider that a thousand dollars' worth of property, as a banker, was sufficient security for a loan of \$1,000, would you?

A. No. You would expect to make some profit out of your loan.

Q. What per cent of the value of the security do the banks usually loan?

A. Well, that is pretty hard to say, because the personal element comes into it.

Q. But as to the security, what per cent of the security do you usually loan?

A. Oh, I don't suppose a man would want to loan more than three-quarters.

Q. Do you know D. W. Truitt owned a three-quarters interest in that property?

A. I do not. [788]

Q. Do you know the bank had security on a three-quarter interest?     A. I do not.

Q. You don't know that the bank only had security on a one-half interest?

A. I don't know anything about the amount of the security.

Q. You stated that the Royal Hotel property in your judgment in April, 1910, was worth \$4,000?

(Testimony of Luther C. Hess.)

A. Yes, sir.

Q. Do you know the amount of the indebtedness that the bank held against the security of that Royal Hotel? A. No, not unless it was read here.

Q. It was not. The books of the bank show there was a claim of \$3,900 and some odd dollars for which this Royal Hotel stood. Would you consider it, when it was worth \$4,000, ample security for claim?

A. It couldn't be considered ample security, no.

Q. Would you consider it security for that claim?

A. It would be security for the major portion of it.

Q. You stated that three-quarters of the value would be all you would consider on a loan?

A. If I were making a loan.

Q. Three-quarters of the value.

A. If I was making a loan, and the element of security was the only thing to be taken into consideration, I certainly would not want to loan up what I considered the full value of the property,—not more than three-quarters.

Q. You stated the Royal Hotel property you believed was worth \$4,000 at the present time?

A. No, I don't believe I did.

Q. Did you intend to express any opinion as to its present value? [789]

A. No, sir. I think I said I doubted it was worth that much at the present time, if you will read my answer.

Q. Regarding the practice of loaning money for the development of mining property, to which Mr.

(Testimony of Luther C. Hess.)

Heilig called your attention, you say that a mortgage would be taken upon the prospect, that is, upon the mining claim that was to be developed, and upon the machinery of the man.

A. That is in some instances.

Q. Where he had machinery?

A. It would depend a good deal upon the individual, and upon the knowledge the bank had of his reputation.

Q. We are considering loans from the standpoint of security?     A. Yes.

Q. And, if you take security, your security would be the lease that the man had on the claim, and the machinery that he had out there?     A. Yes, sir.

Q. Or as much of that as you could get. Now, you stated that if by any chance the loan fell due without a realization on the part of the miner on his claim, you didn't then consider it good practice to close in on him and put him out of business?

A. I said you would have to judge each case upon circumstances, by itself; but that would be the rule.

Q. The machinery that he is using out there is deteriorating constantly?

A. It will be deteriorating some.

Q. It depreciates every year?     A. Yes, sure.

Q. They wear out a good deal of it?

A. That is usually replaced.

Q. And if he doesn't strike something by the end of the first year, he has got a play there next year entirely on credit, has he not?     [790]

A. If he strikes nothing, yes.

(Testimony of Luther C. Hess.)

Q. If his development doesn't realize something by the end of the first year, you think then as a banker that it was more desirable that he be permitted to go on then with the development than it would be to collect the loan?     A. Yes, sir.

Q. You do?

A. Yes, sir. That is the way, as a rule. There might be instances that *that* wouldn't be true. If you were amply secured on your loan, it would be the proper thing to do, because you would not want to work a hardship upon the man. If your security had depreciated even below your loan, it might be best, if he had the chance to pay up the next year, to take the chance to lose a little more, to get his product from the claim.

Q. You think it better to take the chance that possibly you may lose what you were in it, and a little more, rather than to get your money?

A. I said, part of what you had.

Q. You said you might lose a little more?

A. I said, if your security had depreciated, it might be advantageous to take the chance of having it depreciate a little more, and lose a little more than you would by foreclosing.

Q. Because your suit to foreclose might be detrimental to the country?

A. Detrimental to the country and also to the bank.

Q. Then the thing that would be in your mind as a banker would be the interest of the country rather than the security which you held, which would cause a continuance of the loan?

(Testimony of Luther C. Hess.)

A. Not only the interest of the country, but the interest of the bank as well. [791]

Q. But you would be extending the loan because you would not want to bring on a ruinous condition, and not because you had ample security?

A. Certainly that would be the reason for extending it; would be the hope that you would realize more than by foreclosing.

Q. And the further hope that if he did eventually strike something, he would bring his gold-dust to the bank, and you would make some money out of that?

A. Yes.

Q. Those are the chances you would loan your money on? A. You may call it chances.

Mr. RIDER.—That is all.

Mr. McGINN.—That is all.

[Testimony of H. B. Parkin, for Defendants.]

H. B. PARKIN, a witness for defendants, after being duly sworn, testified as follows, to wit:

Direct Examination.

(By Mr. McGINN.)

Q. What is your name? A. H. B. Parkin.

Q. Where do you reside? A. Fairbanks.

Q. How long have you resided in Fairbanks?

A. Since 1905.

Q. What is your business?

A. I am at present manager of Waechter Brothers.

Q. You were formerly manager of the Pacific Cold Storage Co.?

A. I am also still manager for the Pacific Cold Storage Co.



(Testimony of H. B. Parkin.)

Q. You are acquainted with the Fairbanks Banking Company?     A. Yes, sir.

Q. Did you subscribe for any stock on the Fairbanks Banking Company?     A. Yes, sir. [792]

Q. When was that?

A. That was when the bank was reorganized.

Q. February, 1908?     A. Around that time.

Q. How long did you own that stock?

A. I sold it in 1909.

Q. To whom did you sell it?

A. To Mr. Dusenbury.

Q. What part of 1909?     A. May 29th.

Q. How much did he pay you for it?

(Plaintiff objects as irrelevant, incompetent and immaterial. Sustained.)

Mr. McGINN.—I offer to show that it was for the sum of \$1,000.

Q. Since that time have you had any connection with the Fairbanks Banking Company?

A. No, sir, nothing further than doing banking business with them.

Q. Do you know D. H. Berger?

A. I don't know.

Q. Do you know Charles W. Kellogg?

A. Yes, sir.

Q. Are you acquainted with the property known as Number 1 above, first tier, left limit, Engineer Creek?     A. Yes, sir.

Q. You own an interest in that property?

A. Yes, sir.

Q. How long have you owned an interest in that

(Testimony of H. B. Parkin.)

property?     A. I bought the interest in 1907.

Q. Were you acquainted with the value of that property along about the month of April, 1910?

A. In 1910, the—(Interrupted.)

Mr. RIDER.—Wasn't that marked as sufficient to protect the loan?

Mr. McGINN.—No, it is not so marked on the list.  
[793]

Q. Were you acquainted with its value?

A. Yes.

Q. What would you say an undivided one-half interest in that claim was worth about the month of April, 1910?

A. Probably in the neighborhood of \$1,000.

Mr. McGINN.—You may cross-examine.

Cross-examination.

(By Mr. RIDER.)

Q. You think that the value of a half-interest in that claim was worth \$1,000 at that time?

A. I should judge so.

Q. That is for the whole half-interest.

A. For a half-interest, yes.

Mr. RIDER.—That is all.

[**Testimony of John A. Clark, for Defendants.**]

JOHN A. CLARK, a defendant, called as a witness for defendants after being duly sworn, testified as follows:

Direct Examination.

(Mr. McGINN.)

Q. What is your name?     A. John A. Clark.

Q. What is your business?     A. Attorney at law.

(Testimony of John A. Clark.)

Q. How long have you been practicing law?

A. Since 1899.

Q. How long have you been engaged in the practice of law at Fairbanks?     A. Since April, 1906.

Q. Under what style?

A. Under the firm name of McGowan & Clark.  
[794]

Q. McGowan & Clark were stockholders in the Fairbanks Banking Company?     A. We were.

Q. And you became a director of the Fairbanks Banking Company when?

A. I believe I was elected at the regular meeting upon the 12th of May, 1910. The first meeting I attended was the regular meeting in July, 1910.

Q. Prior to that time, Mr. Clark, had you had any experience in banking?     A. Absolutely none.

Q. Were you a bookkeeper?     A. No.

Q. At the meeting of October 12, 1910, I will ask you whether there was a statement presented to the directors as to the condition of the bank on that day?

A. My recollection is that there was, and I think a copy is filed in the minutes—filed with the minutes of that day.

Q. I will ask you to state whether or not at that time you believed that the Fairbanks Banking Company was in good shape?     A. I certainly did.

Q. And solvent?

A. I certainly considered it solvent at that time.

Q. State whether or not you believed that its assets exceeded its liabilities, and included in its liabilities its capital stock.     A. I did.

(Testimony of John A. Clark.)

Q. I will ask you to refer to this statement of the condition of the Washington-Alaska Bank, of October 11th—the bank had then changed its name?

A. Yes. The name was changed approximately the 1st of October. I think the actual amendment was not received in Alaska [795] until about the 6th or 8th, but the name here was changed on the 1st of October, 1910.

Q. The condition of the Washington-Alaska Bank of October 11, 1910. State what that shows as to what the interest, exchange and undivided profits were at that time.

A. It shows here \$51,576.29.

Q. From that statement, as a director what were you led to believe?

A. I believed that that was the undivided profits and the interest and exchange.

Q. I think it also says that that was in connection with some gold shipment.

A. I think I understood it was in connection with profits that were anticipated on gold shipments, or something of that kind.

Q. Did you believe at that time that these were the profits over the liabilities? A. Yes, sir.

Q. Of the bank? A. I certainly did.

Q. Now, there is an item here; expense and savings interest, \$61,401.59. What about that item?

A. I didn't know until last week that the undivided profits should be subtracted from that.

Q. When did you first learn that?

A. One day last week during the trial. Mr. Stew-

(Testimony of John A. Clark.)

art explained that to me I think.

Q. McGowan & Clark became the attorneys for the Washington-Alaska Bank and the Fairbanks Banking Company?     A. Yes, in May, 1910.

Q. And what did you receive from the bank as a part of your retainer?

A. A thousand dollars' worth of capital stock, and the rent [796] of the offices, amounting to \$2,500. It is figured \$2,500 for the year. And, in our letter of acceptance of the offer, which is on file and you can refer to it, I said I would take the office rent, which amounted to about \$1,500 a year, and \$1,000 worth of stock.

Q. State whether or not you regarded that stock of that value at that time.

A. I certainly did. I knew a dividend had been paid a short time before. I thought the stock was worth it.

Q. Now, Mr. Clark, without going too much into detail, I wish you would explain about this account of York to the Court, so that we will understand it.

A. I think it was in 1909—1908 or 9—at the time Judge Lyons was here, we secured a judgment against York requiring him to indorse those drafts which we had—the treasurer's warrants rather, which we had in our safe—to indorse them over to the Fairbanks Banking Company, or, in the event that he refused so to do, then the clerk of the court was to make his indorsement. We had a special officer appointed, who went into the Chandlar country where York was at that time, and he presented



(Testimony of John A. Clark.)

the drafts to York, with presumably a certified copy of the judgment, and requested him to indorse them, and he refused to do it. We then had the clerk indorse them, sent them on to Washington, and, after considerable negotiations with our correspondent there, we secured the amount of the treasury warrants. Then I believe it was before we had received the proceeds of that collection, when we knew or had reason to believe that the warrants would be paid upon the clerk's indorsement, we went to the then receivers of the bank, Messrs. Hawkins and Mack—this is my recollection—and asked them to make up a list of the York claims in the bank that should be paid from [797] these treasury warrants, as I had always known that certain claims held by the bank were to be settled from the proceeds of those warrants. They, the then receivers, prepared—wrote us a letter—I think it was introduced here in evidence the other day—setting forth the claims that they held that should be paid from those treasury warrants. When the money came, we figured out the expenses of collecting, and the amount of their claims, and it amounted to a dividend of, I think—my recollection is 89-1/2 per cent of the total amount of the claims. We accordingly presented to the receivers our check for 89-1/2 per cent of the claims that they had given us a list of, and we got a receipt for it which has also been introduced in evidence, and turned the balance of the money over to Captain Barnette, we having received a written order from Captain Barnette, indorsed on the bottom of the re-

(Testimony of John A. Clark.)

ceiver's letter, telling us to pay those claims pro rata.

Q. If the receivers had included in this list all of the claims against York at that time, including this Timmerman note, you would have paid the percentage just the same?

A. The percentage might have been a trifle less, but nevertheless it would have been paid, because our understanding and instructions were to pay the claims that the receiver presented so far as we possibly could.

Q. You say that judgment was obtained in 1909.

A. It was obtained the year Judge Lyons was sitting here. I think it was obtained the last days he held court, I think about the 3d of July, and I think it was 1909. It took all the time until 1911 to finally get the matter adjusted. The old treasury warrants became worthless by reason of lapse of time. Then there were some proceedings to renew [798] those warrants, and then the warrants were renewed, and, after considerable negotiations we collected the money.

Q. I believe you collected this insurance of Barrett.

A. We didn't collect it, but our correspondents. We had the collection of it from this end, but all the litigation was carried on by our correspondents in San Francisco and other places against the various insurance companies. Our attorneys were Knight & McCarty in San Francisco, and I think there were a couple of suits in Phoenix, Arizona, one or two suits

(Testimony of John A. Clark.)

in Johnstown, Pennsylvania, and I believe there were some other suits—I think one or two other suits in different places.

Q. What was the amount of those insurance policies?

A. The original amount of those insurance policies, less two French companies that were in dispute, they claiming that they had not received the premiums, the original amount, as I remember, was sixteen thousand four hundred and something, of six hundred and something. Then there were two French companies—I think each of those policies were either \$2,500 or \$5,000, and they disclaimed liability, saying they had not received their premiums that were due at the time the policy was taken out. That would have increased it, but there was a question about that. It amounted to about \$16,000 and some dollars.

Q. When was that matter finally adjusted, if you know?

A. I think it was in 1910 sometime that we made our final settlement with the bank.

Q. In the summer of 1910?

A. I don't remember what time it was. I think the books of the bank would show when we made our final report to the [799] bank and settled up our account with them. I think it was sometime in the spring or summer of 1910.

Q. Do you know when John Healey was elected a director?

A. John Healey was elected a director at the first

(Testimony of John A. Clark.)

meeting that I attended. That was in June.

Q. Wasn't he elected in September?

A. No. Preston was elected in September. But John Healey—I think it shows on the minutes of June 12, 1910, that he was elected at that meeting.

Q. And George Preston was elected when?

A. George Preston was elected at the stockholders meeting held on the 12th or 13th of September, 1910.

Q. Do you know whether he qualified at that time?

A. I don't remember whether he qualified then or not.

Q. What was the amount of your bank balance in the Washington-Alaska Bank in October, 1910?

Mr. RIDER.—We object as irrelevant and immaterial.

The COURT.—What is the purpose?

Mr. McGINN.—To show that he believed the bank was solvent.

The COURT.—He may answer the question.

A. The first of the month I think our balance was something like between twelve and fourteen hundred dollars, and during that month, as I recollect, I deposited in the neighborhood of—well, at the end of the month I think our balance was about twenty-six or twenty-seven hundred dollars.

Q. That was in 1910. A. In 1910.

Mr. McGINN.—You may cross-examine.

Cross-examination.

(By Mr. RIDER.)

Q. Mr. CLARK.—Did you know what stocks the

(Testimony of John A. Clark.)

Fairbanks Banking Company, or the Washington-Alaska Bank as it was then known, [800] carried during the time that you were a director of that bank? A. Yes. I think I did.

Q. What stocks did it carry?

A. Gold Bar, and I think \$1,000 in the Chena Milling & Refining Company.

Q. What else?

A. I believe you charge that they carried \$75,000 premium Washington-Alaska Bank stock.

Q. They did?

A. I think that is the entry in the books.

Q. You knew there was not any such thing as that in existence?

A. No, I don't know as I would say that; that there was no such thing in existence.

Q. Did you ever search for that premium of the Washington-Alaska Bank and try to find it during the time that you were a director?

A. I wouldn't know where to look.

Q. You knew the Washington-Alaska Bank had gone out of existence?

A. I knew it was merged with the other bank.

Q. It no longer had any existence. A. No.

Q. And you thought its stock under those conditions could have been sold for a premium of \$75,000?

A. I think that is a matter of bookkeeping entries. I don't know what else they would do with it.

Q. Even though the bank had gone out of existence, they could still carry that as an asset.

A. You will have to ask a bookkeeper about that.



(Testimony of John A. Clark.)

I have heard bookkeepers discuss that here and at Valdez, as to what should be done with that item.

[801]

Q. They couldn't find what to do with it.

A. No.

Q. It had no actual existence?

A. I don't know whether it existed or not.

Q. Did it ever occur to you to charge it to profit and loss?      A. I wasn't sure.

Q. In the discussion of the matter with the directors in regard to getting it off the books?

A. I have heard that urged, and I have heard others say that the proper thing to do was to carry it as it was.

Q. When you stated that you believed that the Washington-Alaska Bank was solvent during this period of time, that belief was expressed in reference to the fact that \$75,000 of stock of the Washington-Alaska Bank had some existence and some value. Is that it?

A. I wouldn't say that. I was considering from the statements that were presented showing that there was undivided surplus or interest earnings and undivided profits.

Q. Doesn't that statement show that you are carrying the Washington-Alaska Bank—the statement of October 12th, to which your attention was called — (Interrupted.)

A. I don't remember whether it does or not, I presume it does.

Q. It shows stocks \$417,949?

(Testimony of John A. Clark.)

A. If you say so. Yes, I will take your word for it.

Q. All the stocks that you had were the Gold Bar and the Washington-Alaska Bank and the Chena Smelting, Milling & Refining Company which was \$1,000. A. Yes, sir.

Q. And Gold Bar was carried on the books at \$341,949. A. Yes.

Q. And the balance of it would have to be this Washington-Alaska Bank stock for \$75,000.

A. I presume it would. [802]

Q. Then, when you say that you believed that the Washington-Alaska Bank was solvent during that period of time, you must be considering this \$75,000 as an asset, are you not?

A. Well, as I look at it now, I would say this; that that would have to be considered as an asset in order to reach those figures.

Q. What became of that Chena Melting works stock? A. The stock, or the property itself?

Q. The stock? A. I don't know.

Q. Did you ever see it? A. No. I never saw it.

Q. Did you ever see it around the bank during the time you were a director? A. No.

Q. You have never seen it since, have you?

A. No.

Q. As a director, didn't you ever attempt to find these stocks that you read on that statement?

A. I knew that the Dexter-Horton stock was outside.

Q. What Dexter-Horton stock?

(Testimony of John A. Clark.)

A. The Gold Bar stock in the Dexter-Horton.

Q. Pledged to the Dexter-Horton?

A. I don't know that it was pledged. I don't think it was.

Q. It was in their custody.

A. I understood it was in the safe deposit box.

Q. Did you ever try to find the other stock?

A. The only other one was the stock of the Chena Smelting, Milling & Refining Company.

Q. Did you ever try to find that?

A. No. The officers said they had that stock, and we didn't go and look for it.

Q. You were appointed one of a committee to examine into the loans of that bank. [803]

A. Yes. That was at the meeting of October, 1910.

Q. Did you ever make an examination?

A. Yes, we did.

Q. Into the loans? A. We did.

Q. Did you ever make a report?

A. I will explain what we did.

Q. Answer me. Did you ever make a report?

A. I don't know whether a report was made or not.

Q. You were a member of the committee?

A. I was.

Q. Was a report ever prepared?

A. It was prepared, I know, by Hawkins and Jackson.

Q. Do you know what became of it?

A. I have not the slightest idea what became of it.

Q. You know it was never presented to the board

(Testimony of John A. Clark.)

of directors?     A. I don't know.

Q. Did you find your loans in a very satisfactory condition at that time?

A. Some of them were not.

Q. About how many were not?

A. I don't know. What we did was this: We went through those loans at night. We were all busy in the daytime, and we took several nights a week during the course of that month and we went through the loans, took each loan and went and hunted up the securities and looked it up, and made out a list at that time of what we considered gild edge, that is, could be realized on practically on a few days' notice; then others that were slow, but good; and then there was another list prepared that were doubtful. That was the order in which we classified the loans.

Q. Do you remember how many of those slow and doubtful ones there were? [804]

A. I haven't any idea, because Hawkins and Jackson had the list in their possession.

Q. Do you remember how many of these perfectly good loans that are referred to here were in that list?

A. I don't remember.

Q. Did you, as attorney for the bank, ever attempt to collect any of those perfectly good loans?

A. I don't know.

Q. Especially those that are past due?

A. The record will show.

Q. Don't you know whether you did or not?

A. I know we brought some suits. I don't know whether that is the Perrault case or not—I know we

(Testimony of John A. Clark.)

brought some suits at that time.

Q. Several suits brought that fall?

A. I know there were several suits where we had the attorney for the receiver substituted as attorney for the plaintiff after the bank had closed.

Q. In the matter of this York transaction, these warrants to which you refer were held by your firm as security for a claim of the bank against York, and also a claim of Barnette against York, were they not?

A. Yes.

Q. What was the amount of Barnette's claim against York?

A. Well, I can't give you the figures, but the 89-1/10 per cent amounts to \$1,900 and some dollars. I don't know the figures, but I know the amount we turned over to him. If I may look at my papers, I can figure out and tell you the exact amount we turned over to him, and we can then figure it out.

Q. See if I can't refresh your recollection on it. Barnette took \$2,000 out of it as his part of the collection? [805]

A. No. He took \$1,900. I have his receipt on file in my papers.

Q. Get them and see how much was turned over to Barnette on that.

A. All right. (Examines papers.)

Q. How much was turned over to Barnette?

A. \$1,950.

Q. As his part of the settlement. A. Yes.

Q. How much was turned over to the receivers?

A. I don't remember the number of the exhibit, but



(Testimony of John A. Clark.)

there is an exhibit here that shows the exact amount.

Q. Here is a copy of it, and that will probably give you the information.

A. (Examining paper.) Yes, I guess that is it; \$692.45.

Q. \$692.45 was turned over to the receivers?

A. Yes, \$692.45.

Q. And nineteen hundred and something to Barnette. A. Yes, \$1,950.

Q. Now, you say that the amount turned over to the receiver was I believe you said 89-1/10 per cent?

A. Yes.

Q. That letter shows 87-1/10 per cent.

A. Well, 87-1/10 per cent.

Q. There was enough in your hands to have liquidated that York claim, if Barnette had not been given that \$1,950? A. Easily.

Q. You figured that amount that was coming to the receiver as his proportion of the claim, based upon the face value of the notes, didn't you?

A. Based upon what the receivers told us was their claim, as shown by their letter to us.

Q. You knew, as a previous director of the bank, that this [806] York claim existed in the bank, did you not?

A. Yes, I certainly must have. Well, wait a moment. No, I don't know. Yes, I must have known that those York notes were there. I don't know as I knew about the Timmerman.

Q. You knew what the amount of the York notes was, did you not?

(Testimony of John A. Clark.)

A. I had forgotten. I didn't know until the receivers wrote us the letter.

Q. Did you ask the receivers to present the York notes to you?

A. Yes. No, not to present the notes.

Q. Just to make a statement of the amount.

A. To tell us the amount of their claim.

Q. The intention was to get the amount of the face of the York notes?

A. No, to get the amount of their claim.

Q. The amount of the face, wasn't it? You made your settlement upon the amount of the face of the York notes.

A. Yes, because we knew there was not enough for anybody to get interest on their claims.

Q. There was \$1,900 coming to Barnette?

A. Yes, and his claim was considerable more than that.

Q. Whose claim? A. Barnette's claim.

Q. You were going to see that Barnette got his \$1,900 whether the bank got anything or not.

A. No. They all got paid pro rata without figuring any interest on any claim. There was not enough to pay the principal of the various claims of the different parties.

Q. Haven't you stated previously that the bank had a lien on these warrants to the amount of their claim?

A. I don't know whether they had a lien. [807]

Q. Were they not pledged with you for the purpose of securing the bank's claim?

(Testimony of John A. Clark.)

A. They were turned over to us by Mr. McGinn who originally instituted this suit, as I remember it, and we held those warrants in our safe. I don't know—you might call it a pledge to secure the claims of the bank, but it was also a pledge to secure the other claims.

Q. Did you not testify respecting these York notes at Valdez?     A. I did.

Q. Did you not testify in this manner (reads):

“We knew all the time that the bank held certain notes. We went to the receivers and got a statement of the notes they held against York. When the money came, after settling with Cleary, the attorney at Washington, and paying our own claim for services rendered, there was something like—as I remember it—I won't be exactly certain—something like 86 per cent of the face of the notes belonging to Barnette and the face of the notes held by the bank, which amount was then paid into the present receiver's hands, and we took his receipt for it, and Barnette's proposition we paid over to him, and that closed the proposition.”

A. That is true.

Q. Then that whole settlement was made on the face of the notes.

A. Yes, because there was not enough to pay principal and interest both.

Q. You have said the receivers didn't make any claim against you for the amount of the interest.

A. They didn't.

Q. Your whole settlement was made irrespective of whether there was enough to pay the interest.

(Testimony of John A. Clark.)

A. Yes, sir. [808]

Mr. RIDER.—That is all.

Mr. McGINN.—I desire to offer and introduce in evidence a portion of the minutes of October 12, 1910, for the purpose of showing the directors present at that time (reads):

“D. H. Jonas, J. A. Clark, J. A. Healey, and J. A. Jackson; George Preston not being present.”

**[Testimony of John L. McGinn, for Defendants.]**

JOHN L. McGINN, a defendant, witness for defendants, after being duly sworn, testified as follows:

Direct Examination.

(By Mr. HEILIG.)

Q. What is your name? A. John L. McGinn.

Q. And your profession? A. Attorney at law.

Q. How long have you practiced your profession?

A. Since 1893.

Q. Where?

A. In Portland, Oregon, and Alaska.

Q. What parts of Alaska?

A. Nome and Fairbanks.

Q. When did you arrive in Fairbanks?

A. March, 1905.

Q. Are you acquainted with E. T. Barnette?

A. Yes.

Q. Were you acquainted with him prior to your coming to Fairbanks? A. No, sir.

Q. Soon after arriving here, you became his attorney?

A. Yes, sir, attorney for E. T. Barnette, also at-

(Testimony of John L. McGinn.)

torney for the Fairbanks Banking Company, then a partnership.

Q. At the time that you arrived here, the Fairbanks Banking [809] Company was a going concern? A. Yes, sir.

Q. You became intimately acquainted with all its business affairs?

A. Well, I was attorney for them, and in that capacity became acquainted with their affairs, that is, I was consulted as legal adviser for them and got such information as an attorney usually gets hold of. I was principally engaged in trying lawsuits during 1905. I stayed here until September of 1907, and then went out, and returned again I think the following March.

Q. Were you in Fairbanks at the time the partnership bank suspended? A. Yes, sir.

Q. Can you state from your knowledge of the affairs at that time, what caused the suspension?

A. It was the flurry in financial conditions all over the United States at that time.

Q. I will ask you specifically whether it was occasioned by any severe losses sustained by the Fairbanks Banking Company, or merely a lack of currency?

Mr. RIDER.—Objected to as incompetent and calling for a conclusion of the witness.

The COURT.—Objection sustained.

Mr. HEILIG.—Q. At the time of the suspension of the bank, I will ask you to state what steps Mr. Barnette took as president of the bank to communi-



(Testimony of John L. McGinn.)

cate with *a* assure the depositors of the bank with reference to their moneys on deposit in the bank.

A. Why, they circulated, over Barnette's signature, a written statement in which he set forth a statement of the condition of the bank, as I remember correctly giving his assurance to the depositors that everything was in [810] good shape, and that he would put his private fortune back of the bank.

Q. Do you remember whether there was any advertisement to that effect in the newspapers at that time?

A. Yes, sir. And he also— Yes, I am pretty sure it was published in the newspapers. And they also had circulars setting this forth. He also called for a meeting of the depositors, to be held so the affairs of the bank could be gone through.

Q. Where and when was that meeting of the depositors held?

A. That meeting was held in this courtroom. I don't think it was this same courthouse.

Q. That was before the fire, was it?

A. On the 12th of December, 1907.

Q. State regarding the attendance of depositors at that meeting.

A. There was a large crowd of depositors present here, and the matter was discussed, and the matter of the bank going upon a scrip basis was at that time discussed, and I think that you got up and addressed the meeting in regard to the Fairbanks Banking Company going upon a scrip basis.

Q. I call your attention to the fact that I appeared

(Testimony of John L. McGinn.)

at the second meeting. Tell what transpired at the first meeting.

A. I can't segregate these meetings. I know there was a committee appointed of five, to go through the affairs, at the first meeting, to go through the affairs of the bank and make a careful examination, and report back to the depositors.

Q. Did that committee make a report?

A. Yes, sir.

Q. Is that report in evidence here?

A. Yes, sir. [811]

Q. I would ask you, for the purpose of illustration, is this the printed report signed by W. G. Cassels and others?

A. That is not the printed report. This was a typewritten report. Afterwards, upon the 22d day of December, this committee's report was gotten out and addressed by the committee to individual depositors, and sent to them through the mail.

Q. I will ask you whether the typewritten report is in evidence? A. It is.

Q. And based upon that, a circular was published and caused to be circulated by this committee?

A. Yes, sir.

Q. Subsequent to that, this second meeting of the depositors was held to pass upon the recommendations of that committee? A. Yes.

Q. Do you remember about when that was?

A. My recollection is that it was about—I think it was the 16th of December, 1907.

Q. That committee recommended liquidation of

(Testimony of John L. McGinn.)

the bank, and the appointment of a receiver for that purpose?     A. Yes.

Q. Will you state to the court why that recommendation was not carried out?

A. Well, that was the meeting where you got up and addressed them, and suggested to them that the other banks were going upon a scrip basis, and this bank could do the same thing. And the depositors thought that that was the proper thing to do.

Q. How did the depositors indicate their acceptance of that suggestion?

A. There was a rising vote, if I remember.

Q. Was there any dissenting vote?

A. No, sir. [812]

Q. Isn't it a fact that this courtroom was crowded, standing, to the doors?     A. Yes, sir.

Q. And that the meeting was confined exclusively to depositors?     A. Yes, sir.

Q. What followed after the vote of the depositors that the bank should not liquidate, but resume on a scrip basis?

A. Then the bank started, opened up in pursuance of that, on the 23d day of December, 1907.

Q. How soon after that, and from whom did the suggestion come, to organize a corporation to take over the affairs of this partnership?

A. Well, it came from—I don't know just where it originated, but it came from—it was talked about amongst the merchants here, and amongst the miners, and attorneys, professional men, and they thought it would be a good idea to organize a corporation,

(Testimony of John L. McGinn.)

and it was talked of by Barnette, to organize a corporation to take over the Fairbanks Banking Company, that is, to organize what they considered a miners and merchant's bank, get the men who were the large operators on the creeks interested, and also the merchants in the town.

Q. In pursuance of that talk, what was the next definite steps taken toward that?

A. The next step was that either upon the 3d or 4th day of January, there was a meeting held in my office of these proposed incorporators.

Q. About how many were present?

A. Well, I can't recall just at this time. There was quite a crowd there. I know. My office was pretty well filled up.

Q. What was the fact in regard to the persons there being large depositors in the bank at that time?

A. They were large depositors. There was Dave Yarnell, and [813] Dan Ryan, that I remember of particularly. I think Dan Ryan had something like \$25,000 in the bank when it suspended, and my recollection is that Dave Yarnell had something like \$35,000, but I wouldn't be so sure about that.

Q. Do you remember whether the Jessons had any considerable sum in there at that time?

A. I can't recollect.

Q. These persons numbered about how many?

A. The minutes say 19, and I suppose that is about right. It may have been that, or less, or more. I can't recollect. All I can depend upon in that connection, is what the minutes say.

(Testimony of John L. McGinn.)

Q. Was there a meeting organized so that a secretary was appointed?

A. Yes. My recollection is that there was a chairman appointed and a secretary. There don't seem to have been any minutes taken of that meeting, no minutes preserved. It was somewhat of an informal meeting, more so than anything else.

Q. What was done at that informal meeting?

A. There was a committee of three appointed at that time to go through the affairs of the Fairbanks Banking Company. That committee consisted of Claypool, Jesson and Jonas. Jesson had stated that he would subscribe for \$10,000 shares of stock, or \$10,000 worth of stock, and that he would subscribe so much more for each of his brothers, and also some for Mrs. Lee Jesson, and he was placed upon the committee I think upon his own request, stating that they were going to put that much money into the affair and he wanted to be a member of that committee and examine and investigate the affairs of the bank himself.

Q. This was which Jesson?      A. John A. Jesson.

Q. Mr. Claypool and Mr. Jonas had been upon the depositors' [814] committee and were familiar with the assets and liabilities of the partnership at that time.      A. Yes, sir.

Q. How soon after that committee was appointed, did it report to anybody?

A. That committee, the minutes show here, met at 10 o'clock I think it was upon the 5th day of January, and they reported back to a meeting held in the



(Testimony of John L. McGinn.)

office of McGinn and Sullivan at 8 o'clock upon the evening of the 6th of January, 1908.

Q. Of whom was that meeting composed?

A. Well, I think the same people who were present at the previous meeting.

Q. What report did that committee make to the meeting?

A. They reported at that time that the values placed upon the assets of the Fairbanks Banking Company by the depositors committee be accepted, and that the old partnership be allowed stock for the difference between the amount that the assets or the resources exceeded the liabilities.

Q. Is there a minute made of that report?

A. Yes. It is in evidence. Also they spoke about the accrued interest on existing loans as of the 12th day of December, 1907, up until February 15, 1908, being kept by the partnership; also the privilege of Mr. Hill and Mr. Wood, to either take stock or money; and, if they took money, the same was to be paid before the 1st of July.

Q. We have a minute of that meeting in evidence?

A. Yes, sir.

Q. What did the meeting do with the report of that committee?

A. They adopted it. I might state in this connection that that date, the 1st day of July, was fixed, if I remember correctly, for one reason that the bank was upon a scrip basis at that [815] time, and they didn't feel that they could pay the money very much before the 1st of July, and the other reason

(Testimony of John L. McGinn.)

was that Mr. Wood was in Seattle and it was not known whether he would return over the trail or come by steamboat, and if he came by steamboat he would not get here before the first of July, and it was to give him an opportunity to return here and exercise his option to either take stock or money.

Q. How did that option on Mr. Hill's and Mr. Wood's part to accept money or stock originate?

Mr. RIDER.—Let it be understood that I am objecting to any testimony being received respecting an oral option, for the reason that it is irrelevant and immaterial. It is the same objection I made to Wood and Hill when they were testifying.

The COURT.—The same ruling; received, subject to your objection.

A. I don't know just how that did originate. I know it was talked of in the meeting, and they were given that privilege. Just how it originated, I can't tell.

Mr. HEILIG.—Q. Was it at this meeting, at which the committee of three reported, that the list of proposed subscribers proposed stockholders was presented?

A. Yes, sir.

Q. You saw that list?

A. I saw the list, yes, sir.

Q. Can you state whether at that time Mr. Hill was requested to subscribe for stock for Mr. Wood?

A. I know that Mr. Hill refused to subscribe. Whether he was requested or not, I don't know.

Q. What did Mr. Hill say, if anything, at that time as a reason for his refusal?

(Testimony of John L. McGinn.)

A. I can't recall that. [816]

Q. Do you know who did subscribe Mr. Wood's name?

A. I can't recall that, except from the handwriting as I look at it now.

Q. At that meeting were you instructed to proceed with the incorporation, or had that been prior to that time?

A. I think that was the meeting at which a committee was appointed to take steps towards the incorporation of a company. The matter was left to them.

Q. What instructions did you receive from the committee relative to incorporation?

A. To proceed to incorporate under the laws of the State of Nevada, which I did.

Q. How did you proceed?

A. Why, I telegraphed to W. H. Metson to San Francisco. The telegram was introduced in evidence. I set forth as briefly as possible the terms under which we wanted to incorporate.

Q. At what time did you expect that corporation to be complete, or to receive the Charter, the Articles of Incorporation?

A. We expected that we would be able to have them back here and be able to start in business by the 15th day of February, 1908, organize and take over the affairs of the partnership.

Q. You drew up this transfer which was made by the partnership to the corporation which is in evidence here called exhibit "C."

(Testimony of John L. McGinn.)

A. Yes, sir, that is the one that is attached to the complaint.

Q. At whose instance did you draw it up?

A. At the instance of the executive committee of the Fairbanks Banking Company.

Q. Who brought you the memoranda which you drew that instrument from?

A. Mr. Dusenbury. [817]

Q. You had attended the meetings of the executive committee and understood the terms which they had arrived at with Mr. Barnette, Mr. Hill and Mr. Wood?

A. I had attended the meeting of the stockholders held on the 12th day of March, 1908, and also the meeting of the board of directors that was held upon that date when the executive committee was appointed. Then the executive committee, if I remember correctly, went through the affairs of the bank at that time; then afterwards Mr. Dusenbury brought up these papers to me.

Q. What papers did he bring up to you?

A. He brought me up the minutes of the meeting of January 5th, 1908, and also a list of the resources and liabilities of the bank, which set forth the stock and the loans and discounts. And it is practically embodied in the contract itself, that is, that assignment and transfer.

Q. Can you explain how you happened to omit the provision in regard to the old interest account?

A. I cannot.

Q. And the option to Hill and Wood?

(Testimony of John L. McGinn.)

A. It should have been there. I neglected to do it. I overlooked it. There was a good many items there. That was the understanding with the parties.

Q. When did the stockholders hold their first meeting?

A. The stockholders held their first meeting on the 12th of March, 1908.

Q. And of that meeting we have some minutes?

A. The minutes are in evidence, yes, sir.

Q. At which meeting did the stockholders elect the board of directors? A. At that meeting.

Q. When did this board of directors hold their first meeting? [818]

A. I think immediately after the adjournment of the stockholders meeting. In fact, I am quite sure of it.

Q. And elected their officers? A. Yes, sir.

Q. Who were employed by that committee to prepare by-laws?

A. McGinn & Sullivan, the attorneys for the bank.

Q. Did the question come up before the board prior to the drawing of those by-laws, with reference to the right and authority of the bank to purchase its own stock?

A. That was discussed, if I recollect right, at the first meeting—the first or second meeting—the second meeting of the stockholders, I think, the one held January 6th. The question arose as to people who were not satisfactory to the stockholders, getting stock and becoming stockholders in the bank, and they didn't want to have anybody as a stockholder



(Testimony of John L. McGinn.)

that might be obnoxious to the other stockholders, or persons whom they thought might be detrimental to the interests of the bank, and particularly they didn't want to have any of the stock get into the hands of any of the persons connected with the other two banks here, the Washington-Alaska Bank or the First National Bank, because they thought they might use it as a means of inquiring into their business.

Q. So you were consulted with reference to that power?

A. I was consulted with reference to it, and I examined the question at that time and came to the conclusion that the corporation had a right to buy in their stock, and I so [819] advised them. And, when I prepared the by-laws, I inserted that provision in the by-laws.

Q. Did you at any time advise the directors to the contrary? A. No, sir.

Mr. RIDER.—You said “that provision.” Do you mean the one you read here yesterday?

A. Yes, sir.

Mr. HEILIG.—Q. I will ask you to state whether you gave that advice and prepared by-laws in correspondence with it, after consultation of what authorities you had at that time.

A. Yes, I looked the matter up.

Q. You were well provided with law books in your office at that time?

A. Yes, sir. I had Frost on Corporations. Then I looked back where they have the statutes where

(Testimony of John L. McGinn.)

it is prohibited—those States where it is prohibited that they shall buy any stock, and there was no law on that subject, no prohibition against it in the law of Nevada, according to Frost. I still have that work.

Q. You state that at the time you drew up that transfer and contract, exhibit “C,” which was signed by Barnette and Mr. Hill while Mr. Wood was outside, that you omitted a provision in regard to Mr. Wood’s option and Mr. Hill’s option to take money instead of stock for the difference between the assets and liabilities of the partnership. A. Yes, sir.

Q. What, if anything, was done with reference to that prior to Mr. Wood’s return?

A. There was nothing done about it.

Q. When Mr. Wood returned, will you state how the matter came up, if at all, and what assurances were given to Mr. Wood. [820]

A. These papers were signed upon the 16th day of March. I think Mr. Wood got in here some time in the middle of April, and, of course, they wanted his signature to this transfer. On the 16th of March, Mr. Wood read it over and stated that he would not sign it because there was a clause in there stating that he had subscribed to stock, and he didn’t intend to subscribe for any stock; that he wanted his money, as he was going to sever his connection with the bank. And I have forgotten just now, but my recollection is that that was at a meeting of the executive committee, but I am not sure about it, or whether it was just an informal meeting that we held

(Testimony of John L. McGinn.)

there at that time. I know that Hill and Barnette, and I think Jonas—well, I can't recollect just at present—they talked the matter over, and they said, "Here, Dick. You are perfectly protected." And they showed him the minutes of the meeting of the directors of the 12th, where the privilege was given to him. And the matter then was thoroughly understood that by signing that agreement he would not waive any right that he had to demand his money before the 1st of July.

Q. You were Mr. Wood's attorney at that time?

A. Well, I was acting for the bank at that time.

Q. For the partners. You were practically acting for all of them.

A. They were not a partnership then. The partnership had been dissolved. This was in April.

Q. Prior to that you had been Mr. Wood's attorney?

A. Yes. That is, I was attorney for the partnership. I was never attorney for Mr. Wood like I was for Captain Barnette. I don't know that Mr. Wood had any attorney outside of the attorney for the partnership. That is, I didn't transact any personal business for Mr. Wood. [821]

Q. You heard these assurances made to Mr. Wood?

A. Yes, sir.

Q. They were made in your presence by the members of the executive committee?

A. Yes. And the matter was thoroughly understood at that time that he had that right.

Q. Did you or did you not at that time advise

(Testimony of John L. McGinn.)

Wood to the contrary?

A. No, sir. There was no question about it. It was so thoroughly understood.

Q. Did you join in those assurances to Mr. Wood that if he signed this transfer and agreement he would not be bound by that clause in the agreement, to take the stock?

A. Yes, sir. I thought the whole thing was a matter of record; that one was a part of the other.

Mr. HEILIG.—Q. When did you first become a director of this corporation, do you remember?

A. I was elected at a meeting of the stockholders held upon the 13th day of September, 1909, but I didn't qualify that night. I think I qualified the succeeding day, and attended a meeting upon the 14th day of September, 1909. That was the first meeting that I attended as a director up until the 1st of May, about the time that Mr. Wood and I purchased the stock of the First National Bank.

Q. You say the 13th was the first meeting that you attended.

A. No. On the 14th; there was a stockholders' meeting on the 13th, where I was elected a director. I wasn't present at the stockholders' meeting that night, but I was elected a director; I didn't know anything about it until the next day. Then I attended a special meeting, or an adjourned meeting, on the 14th. [822]

Q. At the meeting of November 12, 1909, state whether or not you had a report of the manager of the Gold Bar Lumber Company showing the con-

(Testimony of John L. McGinn.)

dition of its affairs on October 1, 1909.

A. I can't recollect now whether we had at that time or not. We always got the annual report for the fiscal year ending September 30, but whether we had it for the year ending September 30, 1909, on November 12th or not I can't say.

Q. Do you remember any discussions of any of the statements of that company?

A. Yes. We discussed Gold Bar a good deal at these meetings, and we used to go through the reports very carefully.

Q. Can you remember a meeting of January 12th, 1910, when there was a statement of the three banks presented and a discussion in regard to their condition?

A. Yes, I remember that meeting. I can't remember the particular date of the board meetings. Do the minutes show that I was present at that meeting?

Q. Yes.

A. That is the meeting when the statement of the three banks was presented?

Q. Yes.

A. Well, at all these meetings when these statements of the banks were presented, we always discussed the affairs and condition of the banks, discussed the loans and things of that kind. [823]

Q. It appears from the records in the case, the allegations of the complaint, that on September 21, 1909, Louis Enstrom surrendered up five shares of the capital stock. Do you remember anything about that transaction?



(Testimony of John L. McGinn.)

A. I never knew a thing about it until I saw it in the complaint in this case. It was never done on account of any action taken by the board of directors. I don't believe the board of directors ever heard anything about it, at least, I know that I have no recollection of it.

Q. What is your knowledge with regard to a similar transaction with regard to Oscar Enstrom's five shares?

A. The same thing. I don't remember of the matter ever coming up before the board of directors.

Q. It transpired from evidence read this morning that Mr. Parkin requested the corporation to take over his 10 shares of stock, and it was refused. But the allegations of the complaint set forth that on October 28, 1909, apparently 10 shares of stock were surrendered. Do you know anything about that transaction?

A. It was never done with the knowledge of the board of directors. No action was ever taken in the matter, except *except* the board of directors refused to take his stock. I think I know something about that transaction; that is, I afterwards learned it.

Q. Any transaction in which you participated?

A. No. And it is since these suits that I have learned about it. I had no personal knowledge about it.

Q. Then on the same day, October 28th, 1909, it appears that one share of stock held by Alex Cameron was surrendered up.

A. I never knew anything about it.

(Testimony of John L. McGinn.)

Q. On the same day two shares of stock held by Edith McCormick.

A. I never knew anything about that. [824]

Q. Do you know now whether she had paid for her stock?

A. No, I don't know whether she had paid for her stock. I think there were two stock notes that were never paid. What I would know would be from the evidence disclosed here. I wouldn't have any independent memory.

Q. On the same day, October 28th, it appears that J. W. McCormick surrendered 2 shares of stock to the corporation.

A. That was all done without the knowledge of the board of directors, as far as I know.

Q. Do you know anything about the transaction in which Francis H. Taylor on November 10, 1909, surrendered 5 shares of stock? A. No.

Q. Do you know anything about the transaction of McGowan & Clark surrendering their 5 shares of stock on November 23d?

A. I never knew anything about it until this suit was brought.

Q. Or Horton & Dunham, January 18, 1910, how they came to surrender their shares of stock?

A. No, sir.

Q. When did you cease to be a director?

A. The time we bought the bank, about the first of May, 1910.

Q. After that you attended no more directors' meetings?

(Testimony of John L. McGinn.)

A. No more directors' meetings, no, sir.

Q. Now, as to the condition of the bank April 12, 1910, I will ask you to state whether you believed the bank at that time to be solvent.

A. Absolutely. Yes, sir.

Q. I will ask you to state how you showed your confidence in that belief?

A. Well, I had about in the neighborhood of \$64,000 on deposit there at that time.

Q. Did you keep it on deposit there for some time afterwards?

A. I kept it on deposit there until we purchased the First [825] National Bank.

Q. And prior to that time had you considerable sums on deposit?

A. Yes, sir. I had more on deposit a short time before that.

Q. More than \$60,000?

A. Yes. I have had thirty-four and thirty-five thousand dollars more.

Q. Can you state from memory the names of those directors who had large sums on deposit at that time?

A. Dave Yarnell had about \$140,000, and the Jessons as I understood in the neighborhood of \$88,000.

Q. On April 12, 1910?

A. Yes, sir, about that time. That is my recollection of it.

Q. You were interested with Cook & Company in their mining operations? A. Yes, sir.

Q. What deposits had they? A. I don't know.

(Testimony of John L. McGinn.)

Q. Any large sum?

A. I couldn't tell. About April 12th, I don't know how much they were carrying at that time of the year. They had done work, been working all winter, and we hadn't contributed any more to that account than what was necessary to pay the expenses. No gold was coming in then, and I could not tell what that account would be.

Q. In your capacity as attorney for the bank you drew a great many securities for the bank for loans made to miners? A. Yes, sir.

Q. You did all of that work for the Fairbanks Banking Company, a partnership?

A. For the partnership Mr. Sullivan did a great deal of that work, and I did some of it. [826]

Q. And for the corporation afterwards?

A. Yes, sir.

Q. You learned in that way a great deal about the method of that bank in making loans?

A. And I was also attorney for the First National Bank.

Q. You knew in that way in regard to the method of the bank in loaning money to miners in developing and carrying on the mining industry? A. Yes.

Q. State briefly what was the declared practice of the bank with reference to making loans and pressing the collection of them promptly at maturity or otherwise; what the policy was.

A. It was the custom of the Fairbanks Banking Company, as well as the other banks, for instance if a man had a piece of ground out there and put down

(Testimony of John L. McGinn.)

a shaft and struck pay and he would want to get money, they would send a man out to investigate and see what he had. If they thought that the prospect or the showing that the ground had made was sufficient to warrant them in making a loan, they would do so, and they would carry that man according to the conditions that arose in each particular case. It was a matter that they had to exercise judgment about. You could not lay down any fixed rule in regard to when that note should be collected, or how long it should be allowed to run. The banks always undertook—that is true of all the banks—ample security at the time they made the loan. Whenever they advanced any money upon a piece of mining ground, they *thought* that ground would produce the money.

Q. How was that ascertained; from the prospects of the ground?

A. Take the Fairbanks Banking Company. One of the ideas in having directors from the various creeks, like Jesson on [827] Ester, Yarnell on Dome. I know this was talked of at the stockholders' meeting. Bob Sheppard on Fairbanks Creek, McMullen out on Goldstream, Charley Robinson was operating on Vault Creek at that time. One of the conditions was that if any miner from any of those creeks came in and required a loan, then they would telephone out to one of these directors and have them go down and examine the ground; and in case they didn't have a director upon the creek, then they would send a man out. Originally they had men employed



(Testimony of John L. McGinn.)

for that purpose. I have known Tom Carroll to be employed to pass on property on Dome Creek, and other men.

Q. The directors were chosen with a view to their knowledge of the mining industry? A. Yes, sir.

Q. And their competency to judge of the value of ground?

A. Yes, sir, that was taken into consideration.

Q. And they were frequently consulted by the bank's officers with reference to the collection of past due paper? A. Oh, yes.

Q. And the question of the advisability of what course and policy to pursue? A. Yes, sir.

Q. Now, from your knowledge of the situation, your experience as an attorney and as one of the directors, do you say the directors exercised good judgment in refusing to press claims immediately when they became due? A. I think so.

Q. State the circumstances surrounding the declaring of this dividend on April 12, 1910, by the Fairbanks Banking Company.

A. The statement of the three banks that was presented to the meeting of January 12 showed the undivided profits of the [828] institution at that time, and upon the 12th day of December the Washington-Alaska Bank declared a dividend of \$50,000.

Q. You said on the 12th of December?

A. On the 12th day of March, 1910, the Washington-Alaska Bank declared a dividend of \$50,000, and \$25,000 of that amount was placed in the undivided profit account of the Fairbanks Banking Company,

(Testimony of John L. McGinn.)

and \$25,000 was used in reduction of what they were carrying the capital stock of the Washington-Alaska Bank for. The statement of the banks showed that there was some \$34,000 at that time in the undivided profit account, and it was moved and seconded that a dividend be declared, and it was declared by the directors.

Q. At that time you believed that the bank had a surplus from which that dividend could be declared?

A. Yes, sir. Every man there believed that; believed that all the bad debts had been charged off at the expiration of the fiscal year, which was upon December 31, 1909, of the three banks. And we declared the dividend as of that date, as of the condition of the bank December 31, 1909.

Q. It was understood that that dividend would not be paid for several days thereafter?

A. Well, I don't know as I have any particular recollection as to that.

Q. You believed that the directors at that time were justified in declaring this dividend?

A. Yes, sir.

Mr. HEILIG.—That is all.

Cross-examination.

(By Mr. RIDER.)

Q. You say you declared that dividend on April 12th as of December 31st, 1909? A. Yes, sir.

Q. How could that be, Mr. McGinn? You didn't have the [829] dividend of the Washington-Alaska Bank on December 31, 1909.

A. As of the condition of the banks on that date.

(Testimony of John L. McGinn.)

The statement of the Washington-Alaska Bank December 31, 1909, showed that there was a surplus and undivided profits amounting to something like \$56,000, if I remember correctly, and the undivided profits of the Fairbanks Banking Company was some \$9,000, and it was based upon the condition of the banks as of date December 31, 1909.

Q. There is nothing in the minutes that shows that you declared that dividend as of December 31, 1909?

A. I couldn't tell you as to that; not that I recall.

Q. The minutes do show that, in order to enable the Fairbanks Banking Company to declare that dividend you had to set aside \$25,000 of the dividend that had been received from the Washington-Alaska Bank. A. Yes, there was \$25,000.

Q. How could you have declared it as of December 31st?

A. The Fairbanks Banking Company owned all of the stock of the Washington-Alaska Bank. The Washington-Alaska Bank upon the 31st day of December *were* entitled to declare a dividend of \$56,000 at that time, but the directors were not here. Under the laws of the State of Washington, I think the directors' meetings had to be held at that time in Seattle, or the stockholders' meetings were required to be held out there, and Mr. Parsons and others who were then directors were not present here. And, at the stockholders' meeting held in Seattle some time in February or March they elected a board of directors, and that board of directors qualified, and then they declared the dividend based upon the condition

(Testimony of John L. McGinn.)

of the bank as of December 31, 1909. Then the Fairbanks Banking Company, being the stockholder of the Washington-Alaska Bank, received that dividend, and they took [830] \$25,000 of it and put it in their undivided profit account, which account then showed the amount of about \$34,000.

Q. The Fairbanks Banking Company, as shown by its books, only had \$9,000 of surplus on December 31, 1909.

A. The entry was probably made on December 31st, but the money was there.

Q. What money are you talking about?

A. The \$25,000.

Q. I am talking about December 31st. A. Yes.

Q. On December 31st the books of the Fairbanks Banking Company only showed a surplus of about \$9,000. A. Yes, sir.

Q. Then the Fairbanks Banking Company could not have declared on December 31st this dividend?

A. The dividend is declared on that basis, and upon the condition of the Washington-Alaska Bank as of date December 31st.

Q. But the Washington-Alaska Bank had not declared any dividend on December 31st.

A. No. But it was the condition of that bank of that date that was taken into consideration.

Q. But you would have to declare your dividend in the Fairbanks Banking Company as to the conditions existing in it on December 31st?

A. But we added to the surplus account, as to its condition at that time, the \$25,000 received from the

(Testimony of John L. McGinn.)

Washington-Alaska Bank.

Q. Which you didn't get until April 12th.

A. Which we didn't get until April 12th.

Q. You stated that certain of these directors had certain large deposits in the Fairbanks Banking Company in December, 1907. How much did you say Yarnell had?

A. I was under the impression that Yarnell had in the [831] *in the* neighborhood of \$35,000. If he didn't then, he did immediately prior to that time.

Q. Don't you know that the books show that on December 11, 1907, Yarnell had \$15,858.86?

A. Well, I don't know anything about that, but I understood at that time, and I think you will find, that he had a larger deposit.

Q. And that on December 27th Mr. Yarnell's deposit was reduced to \$10,858.86? A. I don't know.

Q. How much did you understand Mr. Ryan had, as you testified?

A. I understood he had about \$25,000 on deposit at the time the bank suspended.

Q. Don't you know that the books show that on December 10th Ryan had \$9,769.86, and that that continued until December 23d when his deposit was \$9,707.86?

A. No, I don't know about that. I know that when the bank suspended it was general talk around here that Ryan had about \$25,000 on deposit, Dan Ryan.

Q. You are basing your testimony then upon the general talk that went around?

A. I got it principally from the officers of the bank.



(Testimony of John L. McGinn.)

I know it was talked about.

Q. How much of a deposit did you say Mr. Jesson had at that time, December, 1907?

A. I didn't state that.

Q. Didn't you state how much Jesson Brothers had? A. No, sir.

Q. Did you state how much Robinson had.

A. No, sir.

Q. You say that the action of the board of directors taken on September 13, 1909, in the matter of the purchase of the [832] Washington-Alaska Bank stock was ratified on September 14th?

A. Yes, sir.

Q. At which time you were a director, and were present? A. Yes, sir.

Q. The record of that ratification is: The action of the board of directors regarding the purchase of the Washington-Alaska Bank as had at its meeting of September 13, 1909, was confirmed. Did you note any objection to that confirmation on these minutes?

A. I see there is no opposition, but I opposed it at the time.

Q. In the matter of the Wood and Hill stock, and the matter of the accrued interest payment, you say that that was thoroughly understood from the beginning? A. Yes, sir.

Q. That Mr. Hill and Mr. Wood were to be entitled to take cash for their share of the partnership profits? A. Yes, sir.

Q. And that they might have until July, 1908, in which to do that? A. Yes, sir.

(Testimony of John L. McGinn.)

Q. That was always understood from the very beginning, was it?

A. Yes, sir. That was the understanding.

Q. And there was never any understanding that they were to take stock?

A. No, I don't mean that. I mean they had a right to either take stock or money.

Q. They had that election. It was always understood that they had that election?

A. I think it went a little bit further than that.

Q. How much further?

A. I think that it was understood that they had the right up to that time, even if they had taken stock.  
[833]

Q. Up to what time?

A. Up to July 1st to take money, even if they had signed their names to the subscription.

Q. It was always understood that they had the right until July 1, 1908, to take cash instead of stock?

A. Yes, sir.

Q. That was always the understanding.

A. That was my understanding of the matter.

Q. When Wood signed this contract, you say he objected to signing it because it contained the positive clause that he should take stock.      A. Yes, sir.

Q. Wood then *know* that clause was in there when he signed it?      A. Yes, sir.

Q. Did he also know that the clause respecting interest was omitted?

A. I can't recollect about that now. I think that matter was taken up there, too. My recollection is

(Testimony of John L. McGinn.)

that at that time that had been credited to the partnership, so that was disposed of in that way.

Q. That is, prior to the time Wood signed?

A. Yes, sir, prior to the time Wood signed.

Q. But it was known to Wood that it was not in the contract.      A. I can't recollect that.

Q. Do you know when it became discovered by the directors and officers that that clause was not in the contract?      A. I can't recollect just now.

Q. Do you remember whether they knew it or not when they signed the contract?

A. I am satisfied that they didn't know it at that time [834]

Q. That they didn't know it at the time they signed the contract?

A. No. If they had known it they would have called it to my attention.

Q. Mr. McGinn, you testified respecting the early organization of the Fairbanks Banking Company, a corporation, at Valdez in the trial of the United States vs. E. T. Barnette and L. E. Wing, numbers 334 and 337, did you not?      A. Yes, sir.

Q. And at that time the history of the steps taken in the matter of that incorporation were gone over in your testimony.      A. Yes, sir, I think so.

Q. You were examined as a witness in behalf of Barnette at that trial.

A. I think on behalf of the Government.

Q. You were examined by Mr. Fink for the defendant.

A. Well, I appeared both for the Government and for the defence.

(Testimony of John L. McGinn.)

Q. Did you not at that time, when on examination by Mr. Fink and after you had related the historical circumstances surrounding the organization of the bank, give this testimony (Reads):

“Q. It appears from the minutes that have been introduced in evidence here that a resolution was passed on the 12th day of March, 1908, wherein the issue of 440 shares to Barnette, 220 shares to Hill and 220 shares to Wood was authorized. Do you know whether that resolution was in fact passed on the 12th day of March or some time in January?

A. That was an agreement made in January. Let me see.

Q. Before the subscription had been cut down, was it?

A. That was done before the subscription list was cut down. I don't remember just how that arose, but I think it was in this way: That the committee had made a report to the proposed depositors as [835] to the assets of the corporation, and they had classified these assets in a classification, and I think that Barnette, Hill and Wood were entitled to something like 880 shares of stock. And the stockholders, I think, refused to take some of the notes, which cut it down to 520 shares of stock. That is my recollection of it.

Q. Was that the deal between these subscribers, Barnette, Hill and Wood, that is, in a general way? I don't want to lead you, but was it the plan that they were to take stock for the assets which they turned over?

(Testimony of John L. McGinn.)

A. Yes. The contract so provided and the minutes so recite.

Q. That was the original plan?      A. Yes, sir. " Did you give such testimony?

A. Yes, sir. I suppose I did. I think that is about correct.

Mr. RIDER.—That is all.

Mr. HEILIG.—That is all.

Mr. McGINN.—I desire to introduce the petition of E. T. Barnette and Isabelle Barnette in case number 1597; then the order of Judge Overfield made upon the 14th day of March, 1911, upon that petition; then the application of the receivers for instructions; then the instructions given by Judge Overfield upon that application.

The COURT.—They may be considered as offered in evidence, without being read at length, I suppose.

Mr. RIDER.—That is satisfactory to me; but, of course, it is all received subject to my objection.

Mr. McGINN.—I desire to introduce these files.

The COURT.—They may be admitted, subject to the objection, and to a motion to strike if they are not connected with other evidence. [836] •

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[Title of Court and Cause.]

[**Petition of E. T. Barnette et ux. Directing Receiver etc. to Accept and Hold in Trust Deed, etc.**]

To the Honorable PETER D. OVERFIELD, Judge of the Above-named Court.

The petition of the undersigned respectfully shows:



That the said E. T. Barnette is, and for some time last past has been, the president of the Washington-Alaska Bank, a corporation, heretofore doing a general banking business at the town of Fairbanks, Alaska, duly organized under the laws of the State of Nevada; that the said Washington-Alaska Bank did become involved in financial difficulties and was compelled, as a result thereof, to close its doors and suspend its general banking business on the 3d day of January, 1911, and at such time was and is now unable to pay its depositors upon demand in full, and the affairs and property of the said bank are now in the hands of F. W. Hawkins and E. H. Mack, as receivers duly appointed by orders of this honorable Court made in the above-entitled action.

That the said E. T. Barnette desires to become surety to the depositors of the said Washington-Alaska Bank and is possessed of certain real estate and lands, particularly hereinafter set forth and described.

That the said Isabelle Barnette, is the wife of the said E. T. Barnette, and in consideration of the love and affection in which she holds her said husband, desires to aid her said husband in making payment to the said depositors of the said Washington-Alaska [837] Bank and is possessed of certain real estate and lands, particularly hereinafter set forth and described.

That the said E. T. Barnette and the said Isabelle Barnette, his wife, each desire to grant and convey unto the aforesaid receivers of the said Washington-

Alaska Bank the said real estate and lands to be held in trust by the said receivers, their successors or successor, as security for payment to the said depositors of all sums of money which are now due, owing and payable to said depositors, and to that end and for that purpose do herewith deliver into this court certain trust deeds of the said real estate and lands to be held by said receivers, their successors or successor, as security for payment, in full, to the said depositors.

The said real estate and lands, the property of the said E. T. Barnette, which he desires the said receivers to so hold in trust, consist of the following, to wit:

That certain rural property denominated Canada del Tobacco, situated on the right bank of the Santiago River, in the Municipality and District of Santiago, Ixcuinlta, Territory of Tepic, which has a superficial extension of 7577 hectares, 11 aras and 70 centaras, there being comprehended in this area 285 hectares, 25 aras and 90 centaras, being the superficial area of the Island called "La Culebra," which formed part of the Hacienda de Navarrete, but which was separated from the same and incorporated into the Canada del Tobacco by reason of the change in the course of the Santiago River by a strong flood which it suffered that the lines of the Canada del Tobacco are to the east; the Hacienda San Lorenzo, belonging to the Compania Agricola Tepiquena, a corporation, this line beginning from a monument called "La Libertad," which before

was called the "Fig Tree of Aunt Jacinto," to a monument of the Estuary of the Bridge; to the North with the same Hacienda of San Lorenzo from the Estuary of the Bridge to the monument "del Bule," to the east from this monument to that of "La Paloma," with the aforesaid Hacienda of San Lorenzo; and from the monument lastly referred to to the River Santiago, with the property denominated "Las Palomas," owned by Don Eduardo Lartines Ochoa, and toward the southwest of the Canada del Tobacco is situated the Island named "Los Caballos, and that although this island appears on the plan of said Hacienda, it is not embraced in the sale agreed upon because it belongs to Señor Don Manuel Lanzagorta.

The landed property alienated is composed of cultivated lands, grazing lands and forests. It has eight fields fenced with wire. The residence is situated in the Island of Culebra, constructed of stones with roof of tile; a warehouse of palm twigs, roof of thatch, in bad condition; stable with roof of thatch. On the Canada del Tobacco there is a storehouse of wooden walls with roof of tile and a warehouse of cedar wood with roof of tile, all being comprehended in this sale, as also the waters, the mountains, and [838] whatevermore belongs or can belong of deed or right to the said landed property, situate in the Municipality and District of Santiago, Ixcuinlta, Territory of Tepic, Republic of Mexico; also

An undivided one-half interest in lot five (5) in block four (4) in the incorporated town of Fair-

banks, Alaska, according to the official survey of Fairbanks, Townsite made by L. S. Robe in the year 1909; also

That certain lot numbered four (4) in block seventeen (17) in the incorporated town of Fairbanks, Alaska, according to the official survey of Fairbanks, Townsite made by L. S. Robe, in the year 1909; also

An undivided one-third interest of, in and to that certain Dome Group or Association placer mining claim, situate on Dome Creek, in the Fairbanks Mining and Recording District, Alaska; also

An undivided three-fourths interest of, in and to the Isabelle Group or Association placer mining claim, situate on Vault Creek, in the Fairbanks Mining and Recording District, Alaska.

The said real estate and lands, the property of the said Isabelle Barnette, which she desires the said receivers to so hold in trust consist of the following, to wit:

All that certain lot numbered five (5) in block fourteen (14), in the incorporated town of Fairbanks, Alaska, according to the official survey of Fairbanks Townsite made by L. S. Robe in the year 1909; also

That portion of lot numbered five (5) in block thirty-eight (38) in the incorporated town of Fairbanks, Alaska, beginning at the northeast corner of said lot on Second Avenue; thence extending in a westerly direction along said Second Avenue boundary line of said lot a distance of fifty feet; thence extending in a southerly direction parallel with the easterly boundary line of said lot a distance of about

one hundred and forty feet to Third Avenue; thence extending along the Third Avenue boundary line of said lot in an easterly direction a distance of about forty-six feet to the southeast corner of said lot; thence extending along the easterly boundary line of said lot in a northerly direction a distance of about one hundred and forty feet to the northeast corner of said lot, the point of beginning.

Your petitioners, the said E. T. Barnette and the said Isabelle Barnette, his wife, respectfully represent:

That they desire the said receivers, their successors or successor, shall hold each and all the aforesaid lands and real estate in trust as security for payment to the said depositors of all moneys that shall be found due, owing and payable to the said depositors, after the affairs of the said Washington-Alaska Bank shall have been wound up and the assets of said bank realized upon and paid over to the proper persons, such trusteeship to continue until the 18th day of November, 1914, provided the said E. T. Barnette and the said Isabelle Barnette, his wife, shall have failed to pay [839] to the said depositors any deficit that may be found to exist after the winding up of the affairs of the said bank as aforesaid. It being the intent, desire and express wish of the said petitioners and each of them and they and each of them do hereby promise and agree to pay the said depositors in full, not later than the said 18th day of November, 1914.

And your petitioners, and each of them, further desire that the rents, issues and profits of the said



real estate and lands situate in the said Fairbanks Precinct, shall be collected by the said receivers, their successors or successor, and after deducting the reasonable charge for collecting same, and taxes and insurance and other legitimate expenses, shall be paid *pro rata* to the said depositors at such time and in such manner as this honorable Court may hereafter direct.

And your petitioners, and each of them, desire that if at any time your said petitioners, and each of them, and the said receivers, their successors or successor shall deem it more advantageous to sell and dispose of, than to hold and retain, any of the properties situate in the said Fairbanks Precinct, then the same may be sold and the proceeds derived therefrom shall be delivered over to the said receivers, their successors or successor, to be by them or him paid to the depositors in the way and manner hereinbefore suggested for the payment of the rents, issues and profits to the said depositors.

And your petitioners, and each of them, further represent, agree and promise that they shall and will pay to the said depositors interest on each and all deposits at the rate of six per cent per annum from the 4th day of January, 1911, until paid.

And your petitioners, and each of them further represent and say:

That all real estate and lands hereinbefore described and [840] situate in the District of Alaska, are free and clear of incumbrances.

And the said E. T. Barnette does hereby represent and say: That the said property situate in the Re-

public of Mexico is of record in the name of the said E. T. Barnette, and is not subject to any lien, mortgage or other incumbrance, contract or agreement, save and except that certain agreement made between the said E. T. Barnette and one George Edgar Ward and one W. D. Begg, on the 18th day of November, 1909, a copy of which agreement is filed herewith.

And finally your petitioners are informed and believe, and therefore say: That certain legal proceedings are contemplated and about to be commenced against your petitioners in this court, which said legal proceedings would subject the real estate and lands, situate in the District of Alaska, and belonging to your petitioners, to the orders and process of the Court and prevent your petitioners from in any way dealing in or with or disposing thereof, and all of which said real estate and lands are mentioned in this petition; and which said legal proceedings would entail great and unnecessary expense upon your petitioners and that such legal proceedings relate directly to the connection of the said depositors with the said Washington-Alaska Bank, and that your petitioners desire to prevent the commencement of such legal proceedings and the incurring of the said unnecessary and great expense, by surrendering all the real estate and lands of the said petitioners to the said receivers, their successors or successor, in trust, and your petitioners say that it is the desire and intention of your petitioners, and each of them that all said depositors in said Washington-Alaska Bank shall be paid in full their respective

deposits, together with interest thereon at the rate of six per cent per annum from the 4th day of January, 1911, until paid and not later than the [841] 18th day of November, 1914, and for that purpose and to that end your petitioners, and each of them, come into this court and pray;

1. That an order be made by this honorable Court, directing the receivers, their successors or successor, to accept and hold in trust the deeds to the real estate and lands in this petition described and set forth, for the time and in the manner as above recited.

2. That said order shall also direct the said receivers, their successors or successor, to collect the rents, issues and profits derived from the real estate and lands situate in the Fairbanks Precinct, Alaska, and disburse and pay same in keeping with the suggestion and request contained in the above petition.

3. That said order direct that if the depositors of the said Washington-Alaska Bank be not paid in full, including interest upon their said deposits at the rate of six per cent per annum, by the 18th day of November, 1914, then the said receivers, their successors or successor, shall sell and dispose of all said real estate and lands, for the best price obtainable, and the proceeds derived from such sales be applied, first, in payment of said depositors' accounts, together with interest, and the residue, if any, be delivered unto the petitioners, E. T. Barnette and Isabelle Barnette, his wife.

4. That this honorable Court make such further order, not inconsistent with the matters contained

in this petition, as may to this honorable Court seem meet in the premises.

E. T. BARNETTE,  
ISABELLE BARNETTE,  
Petitioners. [842]

United States of America,  
District of Alaska,  
Fairbanks Precinct.

E. T. Barnette and Isabelle Barnette, being first duly sworn, each for himself and herself, upon oath says:

That he and she is one of the petitioners named in and whose name is subscribed to the within and foregoing petition; that he and she has read same, knows contents thereof, and the same is true.

E. T. BARNETTE.  
ISABELLE BARNETTE.

Subscribed and sworn to before me this 13th day of March, 1911.

[Seal] LEROY TOZIER,  
A Notary Public in and for the District of Alaska.

[Endorsed]: No. 1597. District Court, District of Alaska, Fourth Division. Tanana Valley Railroad Co., a Corporation, and John Zug, Plaintiffs, and Washington-Alaska Bank, F. W. Hawkins and E. H. Mack, Defendants. Petition of E. T. Barnette and Isabelle Barnette, His Wife. Filed in the District Court, Territory of Alaska, 4th Div. Mar. 13, 1911. C. C. Page, Clerk. [843]

[Title of Court and Cause.]

**Order [Directing Receiver to Turn Over Certain Papers to Receiver].**

Now, on this day this cause came on for hearing upon the petition of E. T. Barnette and Isabelle Barnette, that an order issue from this Court directing the receivers of the Washington-Alaska Bank to accept and hold in trust certain real estate and lands belonging to the petitioners and described in said petition, for certain purposes therein set forth. And the Court having considered such petition and it appearing to the Court that it is a matter which should originate with the receiver and the Court being fully advised in the premises:

Now, therefore, IT IS HEREBY ORDERED, that said petition of E. T. Barnette and Isabelle Barnette, his wife, and papers appertaining thereto, be turned over to the receivers of the Washington-Alaska Bank for their consideration.

Done in open court at Fairbanks, Alaska, this 14th day of March, 1911.

PETER D. OVERFIELD,

District Judge.

Entered in Court Journal No. 10, page 791. [844]

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[Title of Court and Cause.]

**Application of Receivers for Instructions.**

The undersigned, Receivers of the Court, herein respectfully ask for instructions in the matter following, viz.:



On the 18th day of March, 1911, E. T. Barnette and Isabelle Barnette, his wife, delivered to us two trust deeds properly executed, wherein we are named as trustees, the one conveying a tract of land in the District of Santiago, Ixcuinlta, Territory of Tepic, Republic of Mexico, said to contain eighteen thousand seven hundred and twenty-three (18,723) acres, more or less, by the English measurement, and the other a number of lots with the improvements thereon, situate in the City of Fairbanks, and an undivided one-third ( $\frac{1}{3}$ ) interest in the Dome Association placer claim on Dome Creek; also an undivided three-fourths ( $\frac{3}{4}$ ) interest in and to the Isabelle Association placer claim on Vault Creek, such lots and mining ground being in the Fairbanks Recording District, Territory of Alaska, said deeds being in trust, on the terms and conditions therein specified, the object and purpose being as therein expressed to secure and ultimately pay the depositors and owners of unpaid drafts of the defendant bank, any balance that may remain, after the property and assets of said bank [845] are collected and applied in payment thereof.

As to the real property described in the trust deed of the lands in the Republic of Mexico, we have no knowledge or information as to the condition of the title of the grantors, nor as to the value and availability thereof as security, other or different from that of the public at large. The real property contained in the other deed and situate in Fairbanks and vicinity is of considerable value, the title is clear so far as we know, and there are no incumbrances

of record against it, except the city taxes on one of the lots; The rents and issues of the city lots amount to a considerable sum—as much as Six Hundred and Fifty Dollars (\$650) per month net, as we are informed. The mining claims are of some value and might produce a revenue during the coming mining season, but to what amount we are unable to say.

We are of the opinion that if these deeds are accepted, it will be impracticable to proceed as contemplated, to fix a liability against E. T. Barnette one of the grantors, in favor of the creditors of said bank, by action in the court here. So far as we now know, the property conveyed to us as trustees, located at Fairbanks, and on the nearby creeks, is all the property owned by said E. T. Barnette in Alaska, that would be subject to seizure on a judgment against him in this court. The deed contains some valuable real estate that is the separate property of Isabelle Barnette.

In view of the premises, we ask for the instructions and direction of the Court as to whether we shall accept the said trust deeds and undertake the duties and responsibilities entailed upon us thereby, or return the same to the grantors therein. The said trust deeds are submitted herewith.

Dated at Fairbanks, Alaska, this 20 day of March, 1911.

F. W. HAWKINS,  
E. H. MACK,

Receivers of Washington-Alaska Bank.

Approved:

LOUIS K. PRATT,

Attorney for the Receivers. [846]

[Endorsed]: In the District Court for the Territory of Alaska, Fourth Division. No. 1597. Tanana Valley Railroad Company, a Corporation, and John Zug, Plaintiffs, vs. Washington-Alaska Bank, a Corporation, Defendant. Application of Receivers for Instructions in Re Trust Deeds of E. T. Barnette and Wife. Filed in the District Court, Territory of Alaska, 4th Div. Mar. 30, 1911. C. C. Page, Clerk. [847]

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[Title of Court and Cause.]

**[[Order that Receiver may Accept Trust Deed  
Executed by E. T. Barnette et ux., etc.]**

To F. W. Hawkins and E. H. Mack, Receivers for the  
Washington-Alaska Bank:

Your application, dated March 20, 1911, with reference to a certain trust deed, dated March 18, 1911, signed by E. T. Barnette and Isabelle Barnette, his wife, deposited with you, as receivers in the above-entitled cause, duly considered and it is

ORDERED, that you, as such receivers, may accept the trust deed so executed by E. T. Barnette and Isabelle Barnette, his wife, to certain property owned by them in Alaska, and Mexico, and that you take the proper and necessary steps and action to secure the same and the proceeds and issues therefrom, to the payment of the liabilities of the Washington-Alaska Bank, in connection with your duties as receivers in the above-entitled action.

Dated at Fairbanks, Alaska, this 29th day of March, 1911.

PETER D. OVERFIELD,

District Judge.

Entered in Court Journal No. 11, page 17. [848]

[Endorsed]: No. 1597. In the District Court for the Territory of Alaska, Fourth Division. Tanana Valley Railroad Co., a Corporation, and John Zug, Plaintiffs, vs. Washington-Alaska Bank, a Corporation, Defendant. Filed in the District Court, Territory of Alaska, 4th Div. Mar. 29, 1911. C. C. Page, Clerk. By G. F. Gates, Deputy.

**[Testimony of Sidney Stewart, for Defendants.]**

SIDNEY STEWART, heretofore sworn, called as a witness for defendants, testified as follows, to wit:

Direct Evidence.

(By Mr. McGINN.)

Q. How much has the receiver received as rents and royalties from the property that was turned over to him by E. T. Barnette and Isabelle Barnette in that trust deed? A. The gross receipts?

Q. Yes, the gross receipts.

A. Well, sir, I can't give you that without going over the books. I credit up and charge to separate accounts and carry along the balances.

Q. What are the net receipts at the present time?

A. I have not posted this month. The balance I have here is of April 30, 1914, showing a net balance in the Barnette Trust Fund of \$30,905.65.

Q. What will this month's income be?

A. It will probably come to \$450. [849]

(Testimony of Sidney Stewart.)

Q. That is the net?

A. No. There will be some little charges, a matter of \$10 or \$20, something like that.

Q. What property does that rent principally come from?

A. The rentals are from the city property here, the Barnette Building.

Q. That is the entire city property, including the Barnette Building.

A. Yes, sir; the whole property here.

Q. Do you receive greater rents in the summer months than in the winter months?

A. Yes. In the summer-time there has been one or two extra offices rented there, for a short time.

Q. What rent do you receive from the Barnette residence?

A. That is not rented at \$30 a month.

Q. What other property is there, town property?

A. There is a half interest in this place on First Avenue, known as "The Fish Market."

Q. Is that right above the Nordale Hotel?

A. I can— Yes, right next to the Nordale Hotel.

Q. What besides that?

A. I can't tell without looking up the books.

Q. What is the size of that lot?

A. It is specified in that trust deed to the town property.

Q. What does that pay?

A. There is no income from that.

Q. Can you tell how much gold and gold-dust was



(Testimony of Sidney Stewart.)

received by the receiver from the Dome Creek property last year?

A. Well, that is in the receivership books in the office. I haven't those books here.

Mr. McGINN.—We want that, and also what was received from the [850] Vault Creek property.

A. Yes, sir.

Q. You can furnish us with that to-morrow morning? A. Yes, sir.

Mr. McGINN.—While he is getting that, we will read this deposition.

Mr. RIDER.—Before you go (to Mr. Stewart.)

Q. The rents of this property, which have been inquired about, include the Dome Creek property and the Vault Creek property. They are all included in this item of \$30,905?

A. That includes the whole receipts under the trust deed, both city property and creek property.

Q. Then this item of Dome Creek, and of Vault Creek property, wouldn't be an additional receipt to the \$30,905 which you have already given us?

A. No, sir.

Mr. McGINN.—We desire at this time to read in evidence the deposition of T. F. Ryan (Reads same): [851]

Monday, March 16, 1914, 10 o'clock A. M.

Continuation of the taking of depositions pursuant to adjournment, counsel for all parties being present as at former hearing.

**[Deposition of T. F. Ryan, for Defendants.]**

T. F. RYAN, produced as a witness in behalf of defendants, being first duly cautioned and sworn, testified as follows:

Q. (Mr. McGINN.) What is your name?

A. T. F. Ryan.

Q. Where do you reside, Mr. Ryan?

A. Seattle.

Q. How long have you resided in Seattle?

A. Twelve years.

Q. What is your business?

A. I am in the fruit business.

Q. How long have you been engaged in that business?     A. Since August, 1889.

Q. In the city of Seattle?

A. No, Spokane and Seattle and various other places.

Q. Have you ever been in the Republic of Mexico?

A. I have.

Mr. McGINN.—I suppose, Mr. Rider, that we can use the description in the trust deed in referring to the property in the Republic of Mexico?

Mr. Rider.—It being agreed that the property described therein is the property described in the trust deed from E. T. Barnette to the former receivers in this case.

Q. (Mr. McGINN.) I will ask you to examine this document marked trust deed, which describes certain property situated in the Republic of Mexico and I will ask you to [852] state whether or not you are familiar with that property?

(Deposition of T. F. Ryan.)

Mr. RIDER.—I would like to ask you one question first, Mr. McGinn; do I understand that it is your purpose by this witness to prove the value of the property described in the trust deed?

Mr. McGINN.—Yes.

Mr. RIDER.—Then the plaintiff objects to the introduction of any testimony respecting the value of said property, for the reason that the same is irrelevant and immaterial, and I ask that this objection be noted to the entire testimony of this witness.

Mr. McGINN.—It is understood that the objection will go to all of this evidence—that is agreed between us.

Mr. RIDER.—You understand that I am making the objection to each question.

Mr. McGINN.—I understand that it runs through all of the evidence.

A. (By the WITNESS.) Personally, I have never been on this property, but my managers have reported to me on it and I sent a second manager to confirm his report and I have been more or less familiar with the property ever since.

Q. (Mr. McGINN.) Are you acquainted with the property adjoining it in that vicinity?

A. I have large holdings adjoining it in that vicinity.

Mr. RIDER.—Let me supplement my objection. I now further object, in view of the answer of the witness as given respecting his acquaintance with this property, to his testimony as to the value of the same for the reason that it is incompetent. [853]

(Deposition of T. F. Ryan.)

Q. (Mr. McGINN.) I will ask you to state whether you are acquainted with the nature of this particular ground? A. Yes, sir.

Q. I believe you stated that you obtained that information from the reports of men that you have sent there?

A. The same men that acquired all my holdings, and I have taken their reports for it, because they know more about the tropical lands than I do. They are my confidential men that make me reports.

Q. You have property adjoining it?

A. We have banana plantations adjoining that, within eighteen miles of it.

Q. I will ask you to state whether or not in your opinion you are acquainted with the value of this property described in this trust deed, and were so acquainted in the years 1910 and 1911?

Mr. RIDER.—That is objected to as incompetent, irrelevant and immaterial, and for the reason that the witness has disclosed that the only acquaintance he has with the property is through the reports of others, and his answers would, therefore, be based clearly upon hearsay testimony.

A. (By the WITNESS.) I am.

Q. (Mr. McGINN.) I will ask you to state what, in your opinion, was the value of that property during the time I mentioned.

Mr. RIDER.—That objection as incompetent is understood to go to all this and I do not have to repeat it.

Mr. McGINN.—It is understood that the objection

(Deposition of T. F. Ryan.)

of incompetent goes to the entire testimony of this witness. [854]

A. (By the witness.) I should say, in 1910 and 1911 that property should be worth half a million dollars.

Q. What do you place that valuation on?

A. It is a very peculiarly rich piece of land of which probably the largest body is the best bottom land in that vicinity; very productive. I have had fruit from there, the nicest fruit I have ever shipped from the west coast—bananas.—I place the value on what it is capable of producing and what revenue it was bringing on the cleared land at the time. That land would bring four dollars an acre for corn alone, which is the cheapest product in rent that they could grow on it.

Q. Four dollars gold?

A. Four dollars gold per acre.

Q. Was there any of the land in corn?

A. Yes, there is land in corn and tobacco both, there has been right up to the last year, in fact there is some now.

Q. And what would the tobacco land produce per acre?

A. I am unable to answer that question for the reason that I am not familiar with tobacco—but a great deal more than corn. The way that land has been handled down there, it was leased to the natives under direct management in corn, and I know that land ought to turn off twenty-five or thirty dollars



(Deposition of T. F. Ryan.)

an acre net per year, I would say, very conservatively.

Q. And how about bananas?

A. The Barnette management planted about 750 acres to bananas on that plantation.

Q. And under conditions as they existed in 1910 and 1911 [855] what would that produce, that is the net return per acre?

A. Well, we are allowing the plantations thirty cents a bunch for fruit, and they produce about three hundred bunches to the acre, and it would cost not to exceed twenty dollars an acre for cultivation—about seventy dollars an acre net on bananas.

Q. That is it would produce annually?

A. Yearly, that is on the basis of cost f. o. b. to any of the Central American Republics, not considering any values of any advanced price for the fruit on account of the fact that it is two thousand miles nearer to the Pacific Coast markets, but putting the fruit on the basis of the tropical fruit of Guatemala and Nicaragua and other republics down there.

Q. That is what it would produce to the producer on the plantation?

A. That is what it would produce to the producer without going into the market with his own fruit.















